109-2424

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 765.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFF IN ERROR.

vs.

MANUEL PALMES, COLLECTOR OF REVENUE FOR THE STATE OF FLORIDA AND FOR THE COUNTY OF ESCAMBIA, IN AND FOR ESCAMBIA COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED OCTOBER 23, 1882.

ments of the statute of the United States, for *protest* and *appeal to the Secretary* within so many days, respectively, and *suit* within so many other days.

It is submitted, on the contrary, that these provisions are not of the nature of statutes of limitations, but constitute reasonable *jurisdictional* conditions precedent to any right of suit. In other words, that they leave the importers under the rules for suing which govern ordinary cases, *in every respect*, excepting those therein specified, which last are by way of additional regulation. Inasmuch as "the old law" of suit at the time of the passage of the act which imposed these conditions, included certain State statute of limitations, Congress, upon grounds of public policy applying specially to suits against collectors of customs, required certain additional proceedings, looking to a remedy without suit, to be taken within certain times and to be followed by a suit within certain other times. The language of section 2931 accordingly, as applied to the facts of this particular case, is not simply, as in statutes of limitation, *that no action shall be brought* unless a protest be made within ten days, followed by an appeal within thirty days to the Secretary, and a suit within ninety days after decision by the Secretary; but also, as regards the two former requisites, that otherwise "*the decision of the collector shall be final and conclusive against all persons interested;*" and (as regards the last requisite) that "*the decision of the Secretary shall be final and conclusive, and such vessel or merchandise, or costs and charges shall be liable to duty accordingly.*"

S. F. PHILLIPS,
Solicitor-General.

○

109-2444

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 765.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFF IN ERROR.

vs.

MANUEL PALMES, COLLECTOR OF REVENUE FOR THE STATE OF FLORIDA AND FOR THE COUNTY OF ESCAMBIA, IN AND FOR ESCAMBIA COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

FILED OCTOBER 23, 1882.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 765.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFF IN ERROR,

VS.

MANUEL PALMES, COLLECTOR OF REVENUE FOR THE STATE OF FLORIDA AND FOR THE COUNTY OF ESCAMBIA, IN AND FOR ESCAMBIA COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

INDEX.

	Original.	Print.
Transcript filed in supreme court	1	1
Caption	1	1
Bill of complaint	2	1
Exhibit A. Deed, McConnin, referee, to Maxwell, trustee, August 7, 1872	9	4
Deed, Maxwell, trustee, to Pensacola and Louisville Railroad Company, December 10, 1872	13	5
Deed, Maxwell and Barrett, trustees, and Pensacola and Louisville Railroad Company, to Pensacola Railroad Company, May 6, 1878	17	6
Deed, Pensacola Railroad Company to Louisville and Nashville Railroad Company, October 22, 1880	25	9
Answer	30	11
Interlocutory injunction	38	14
Replication	39	15
Notice of motion for modification of injunction and order	41	16
Order modifying injunction	42	16
Bond for injunction	43	17
Writ of injunction	44	17
Appeal	46	18
Citation	47	19
Clerk's certificate	48	19

PROCEEDINGS IN SUPREME COURT OF FLORIDA.

	Original.	Print.
Petition of appeal	49	20
Cause submitted	51	20
Decree	51	21
Motion for leave to file petition for rehearing	53	21
Motion denied	53	22
Petition for allowance of writ of error	54	22
Order allowing writ	56	23
Bond	58	23
Clerk's certificate	61	24
Writ of error	63	25
Citation	66	25
Opinion	68	26

1 Be it remembered that on the 13th day of June, A. D. 1882, at a regular term of the supreme court of the State of Florida, came the appellant, Manuel Palmes, collector of revenue for the county of Escambia, in the State of Florida, by counsel and filed in the clerk's office of the supreme court of Florida a transcript of the record of the proceedings and order of the circuit court of Florida for Escambia County, in a certain cause wherein the Louisville and Nashville Railroad Company were plaintiffs and Manuel Palmes, collector of revenue for Escambia County, in the State of Florida, was defendant, and of the appeal therein from the decree of the circuit court therein rendered, which said transcript of the record of the cause aforesaid and subsequent proceedings to decree and appeal therefrom is in the words and figures as follows, to wit:

Pleas in the circuit court of the State of Florida for the first judicial circuit in and for the county of Escambia, in a certain cause therein,
2 wherein the Louisville and Nashville R'road Company are plaintiffs and Manuel Palmes, collector of revenue for Escambia County, is defendant.

Be it remembered that on the 25th day of March, A. D. 1882, came the complainant by their solicitor, G. A. Stanley, and filed in the clerk's office of the circuit court aforesaid their bill of complaint in the words and figures, to wit:

To the judge of the circuit court of the first judicial circuit of the State of Florida in and for Escambia County in chancery sitting:

1st. The Louisville and Nashville Railroad Company, a corporation created and existing under the laws of the State of Kentucky, and doing business in the State of Florida, brings this its bill against Manuel Palmes, collector of revenue in and for said county, and thereupon your orator complain' and says that the respondent has levied upon and offered for sale on the day of April, 1882, the following property, to wit: 2 locomotive and (10) box cars, Nos. 4279, 1924, 1364, 1368, 2046, 19229, 3683, 4219, 4391, & 7293, for State and county taxes alleged to be due for the years 1879, 1880, & 1881 upon the railroad track situated in
3 said county and extending from the city of Pensacola to the Alabama line, together with the locomotives, passenger, freight, and other cars and machine shops belonging thereto, said railroad being owned and controlled and operated by your orator.

2d. And your orator further shows unto your honor that said railroad above mentioned was the property of your orator, is the same railroad that was built and for a time operated by the Alabama and Florida Railroad Company, a corporation chartered by an act of the general assembly of the State of Florida, approved Jan. 8, 1853, and that the said Alabama and Florida Railroad, with all and singular the stations, depot buildings, engine houses, road bed, superstructure, tracks, and other improvements and constructions thereon made, and all the rights, privileges, and franchises of the Alabama and Florida Railroad Company were sold under a decree of foreclosure, rendered by this court on the 31st day of May, 1872, and purchased by the Pensacola and Louisville Railroad Company, a cor-

poration chartered by an act of the general assembly of this State, approved 4th of February, 1872, as will more fully appear from Exhibit A, herewith filed, and prayed to be taken as a part of this bill.

4 3d. And your orator further shows that the said railroad, with all the property connected therewith, its privileges, franchises, immunities, was afterwards sold under a decree of foreclosure rendered by the circuit court of Leon County against the said Pensacola & Louisville Railroad Company, and was purchased by the Pensacola Railroad Company, a corporation chartered by an act of the general assembly of the State of Florida, approved Feb'y 27th, 1877, as will more fully appear from Exhibit B, hereto attached, and prayed to be taken as a part of this bill.

4th. And your orator further shows that the afore-mentioned railroad. with all its property connected therewith, and all its franchises, privileges, easement, and immunities were afterwards sold by the Pensacola Railroad Company to your orator, as by Exhibit C hereto attached, and prayed to to be taken as part of this bill, will more fully appear, and is now owned, controlled, and operated by your orator.

5th. And your orator further shows unto your honor that by the 18th section of an act of the general assembly of this State, entitled "An act to provide for and encourage a liberal system of internal improve-

5 ments in this State," approved 6th January, 1855, it was provided that the capital stock of any railroad company accepting the provisions of this act shall be forever exempt from taxation, and the roads, their fixtures, and appurtenances, including work-shops, warehouses, vehicles, and property of every description needed for the purpose of freight and passengers, or for the repair and maintenance of the road, shall be exempt from taxation while the roads are under construction, and for the period of thirty-five years from their completion.

6th. And your orator further shows unto your honor that by an act of the general assembly of this State, entitled "An act to facilitate the construction of the various lines of railroad provided for by the act entitled 'An act to provide for and encourage a liberal system of internal improvements in this State,' approved Jan. 6th, 1855," approved 4th of December, 1855, it was provided by the 4th section thereof that a line of railroad to be constructed from the city of Pensacola, or any other point or points on the waters of the Pensacola Bay or the waters of St. Andrew's Bay, to

6 the north line of the State leading in the direction of Montgomery, Alabama, shall be considered as proper improvements, to be aided from the general improvement fund in the manner provided for, or may be hereafter provided for, in an act to provide for and encourage a liberal system of internal improvements in this State, approved January 6th, 1855.

7th. That the Alabama and Florida Railroad Company, on the 12th of March, 1856, notified the board of internal improvement of its acceptance of the terms of the act in relation to internal improvements, approved Jan. 6th, 1855, and also of the act approved Dec. 4, 1855.

8th. And your orator further shows that the said Alabama & Florida Railroad Company availed itself of the benefit granted by the said acts of Jan'y 6 and Dec., 1855, by constructing and completing on or about the first day of July, 1860, the line of railway therein provided for, to wit, from the city of Pensacola to the north line of the State in the direction of Montgomery, Alabama, and, as your orator is informed and believes, by doing all other things necessary to entitle it to all the benefit of the 18th

section of said act of Jan'y 6, 1855, and by another act of the said
7 general assembly, entitled "An act granting to the Alabama & Florida Railroad Company alternate sections of the swamp & overflowed lands," approved Jan'y 15th, 1859, as well as by the action of the board of internal improvements, as your orator is informed and believes, in setting apart to said railroad company in pursuance of said act its quota of lands, the said Alabama and Florida Railroad was recognized and adopted as one of the roads entitled to all the benefits of the act to provide for and encourage a liberal system of internal improvements in this State, approved Jan'y 6th, 1855.

9th. And your orator further shows unto your honor that by the purchase aforesaid from the Pensacola Railroad Company by your orator, your orator became entitled to all the rights, property, privileges, franchises, and immunities of the said Alabama & Florida Railroad Company, the Pensacola & Louisville Railroad Company, and the Pensacola Railroad Company, under the various acts incorporating these companies and acts amendatory of the same.

10th. And your orator further shows unto your honor that its
8 said railroad, together with its locomotives, passenger, freight, and other cars, machine shops belonging thereto, including the property levied on by respondent, are exempt from taxation until the year 1895.

11th. And your orator further shows unto your honor that no assessment of the said railroad and property was made for the years 1879 & 1880, that the defendant is not authorized in demanding any taxes for either of said years.

12th. And your orator further shows unto your honor that the said proposed sale of the property so levied on by respondent will greatly impede and embarrass the business of your orator and cause it irreparable injury, and your orator further shows unto your honor that the respondent is without property and unable to respond to your orator in a suit at law for damages, and that such proceedings tend to cloud the title of your orator, and that your orator is without redress save in the interposition of this court.

13th. To the end therefore that the said respondent may answer this bill of complaint and that your honor may restrain and enjoin the
9 said respondent from proceeding to sell as aforesaid the said property so levied on, or any thing else connected with the said railroad and required for the use and maintenance thereof, for the alleged taxes, and that your orator may have such other and further relief in the premises as unto your honor may seem meet and agreeable to equity and good conscience.

May it please your honor to grant unto your orator the State's writ of subpœna as well as the injunction hereinbefore prayed for directed to the said Manuel Palmes as collector of revenue for the said county of Escambia, commanding him on a certain day & under a certain penalty to answer this bill of complaint and to abide such further order & decree as your honor may make in the premises.

G. A. STANLEY,
For Louisville & Nash. R. R. Company.

Ex. A.

E. McCounin, referee to Maxwell, A. E., trustee.—Deed.—Recorded June 16, 1873.—Stamped $76.00.

STATE OF FLORIDA,
Escambia County:

This indenture witnesseth that, whereas, by virtue of a judg-
10 ment rendered on the 31st day of May, A. D. 1872, in Escambia County circuit court, in case of Peyton Jandon and J. C. Davis, trustees of the first-mortgage bonds of the Alabama & Florida Railroad Company, vs. The Alabama & Florida Railroad Company, John T. Milner, adm'r, Samuel G. Jones, Edward Broughton, and others, after due and legal notice of sale, on the 5th day of August, A. D. 1872, the undersigned, a referee appointed by the court, did expose to sale at public auction, before the door of the court-house in Pensacola, Florida, the following described property, to wit:

All the several pieces or parcels of land, being the roadway, stations, and depots of the Alabama & Florida Railroad from the southern terminus thereof, in the city of Pensacola, to the northern terminus thereof, in the State of Alabama, together with all and singular the stations, depots, buildings, engine-houses, road-bed, superstructure, track, and other improvements and constructions thereon, and all the appurtenances necessary for the complete use of the said road; also all the locomotives, cars, and other rolling stock, together with all the rights, privileges, easements, and franchises of the said company, and the lands particularly described
11 in Schedule A, hereto annexed, lying in the county of Escambia, State of Florida, and also the lands particularly described in Schedule B, hereto annexed, lying in Santa Rosa County, State of Florida, and the said Alabama & Florida Railroad, stations, depots, buildings, engine-houses, road-bed, superstructure, track, and other improvements and constructions thereon, and all the appurtenances thereunto belonging, locomotives, piers, and other rolling stock, and all the rights, privileges, easements, and franchises of the said company, were bid off at the sum of sixty-six thousand dollars; and the lands in Schedule A were bid off at the sum of seven thousand one hundred and twenty-three dollars and three cents in the aggregate, the same having been sold by sections and parts of sections; and the lands described in Schedule B were bid off at the sum of three thousand seven hundred and ninety-three dollars and eleven cents in the aggregate, the same having been sold by sections and parts of sections, all of said property having been bid off by A. E. Maxwell, as trustee for the Pensacola & Louisville Railroad Company, Messrs. Quilter, Ball & Co., and others.

12 Now know ye that, for and in consideration of the premises and of the sum of seventy-six thousand nine hundred and sixteen dollars and fourteen cents ($76,916.14), the aggregate of the several sums above named, I have and by these presents do bargain, sell, release, alien, and convey to the said A. E. Maxwell, trustee as aforesaid, the above particularly mentioned and described property; to have and to hold the same to him and to his heirs in trust as aforesaid.

In testimony whereof I have hereunto set my hand and affixed my seal this seventh day of August, A. D. 1872.

E. McCOUNIN, [SEAL.]
Referee.

Signed, sealed, stamped, and delivered in the presence of—
R. HERNANDEZ.
LOUIS P. KNOWLES.

STATE OF FLORIDA,
Escambia County:

The execution of the foregoing deed was this day proven before me by E. McCounin, who acknowledged it to be his free act and deed as referee for the uses and purposes therein expressed.

13 Given under my hand and seal official this 16th day of June, 1873.

[SEAL.] R. A. STEARNS,
Clerk Ct. Court.

STATE OF FLORIDA,
Escambia County:

I hereby certify that the foregoing (less Schedules A & B, not transcribed by me) is a true and correct copy of the deed between the parties therein named, as the same remains of record in my office in deed book T, at page 332.

Witness my hand and seal official this 18th day of March, A. D. 1882.

[SEAL OFF'L.] F. E. DE LA RUA,
Clerk Ct. Court, Escambia County, Fla.

Maxwell, A. E., trustee, to Pensacola & Louisville R. R. Co.—Deed. Recorded July 9, 1873.

This indenture, made the tenth day of December, in the year one thousand eight hundred and seventy-two, between Augustus E. Maxwell, of Pensacola, Florida, trustee, party of the first part, and the Pensacola and Louisville Railroad Company, a corporation created by and under the laws of the State of Florida, party of the second part, witnesseth: That the said party of the first part, with the assent of the said Pensacola and

14 Louisville Railroad Company, and of Messrs. Quilter, Ball & Co., the same being the only beneficiaries and persons for whom the party of the first part is trustee as aforesaid, and in consideration of the sum of one dollar to him in hand paid, and of other considerations him and said Quilter, Ball & Co. moving, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part and its successors and assigns forever, all the several pieces or parcels of land, being the roadway, stations, and depots of the Alabama and Florida Railroad, from the southern terminus thereof, in the city of Pensacola, to the northern terminus thereof, in the State of Alabama, together with all and singular the stations, depots, buildings, engine-houses, road-beds, superstructures, tract, and other improvements and constructions thereon, and

all the appurtenances necessary for the complete use of the said road; also all the locomotives, cars, and other rolling stock, together with all the rights, privileges, easements, and franchises of the said company,
15 and all the lands particularly described in Schedule A, hereto annexed, lying in the county of Escambia, State of Florida, and also the lands particularly described in Schedule B, hereto annexed, lying in Santa Rosa County, State of Florida, being the same premises that were conveyed to the party of the first part by E. McConnin, referee, by deed dated the seventh day of August, A. D. 1872, and recorded in recorder's office of Escambia County, of the State of Florida, in book of deeds T, page 332, 3, 4, 5 & 6, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above described premises, and every part and parcel thereof, with the appurtenances, to have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part,
16 its successors and assigns forever.

In witness whereof the said party of the first part has hereunto set his hand and seal this tenth day of December, A. D. 1872.

A. E. MAXWELL, [SEAL.]
Trustee.

Signed sealed and delivered in presence of—
C. C. YOUGE,
W. H. KNOWLES.

STATE OF FLORIDA,
Escambia County:

I, A. E. Maxwell, do hereby acknowledge that I executed the foregoing instrument of writing as my free act and deed, for the uses and purposes therein mentioned.

A. E. MAXWELL, *Trustee.*

Declared and acknowledged before me this 9th day of July, 1873.
[SEAL.] R. A. STEARNS,
Clerk Ct. Court.

STATE OF FLORIDA,
Escambia County:

I hereby certify that the foregoing (less Schedules A & B, not transcribed by me) is a true and correct copy of the deed between the parties
17 therein named as the same remains of record in my office in deed book T, at pages 364, 365.

Witness my hand and seal official this 18th day of March, A. D. 1882.
[SEAL OFFICIAL.] F. E. DE LA RUA,
Clerk Ct. Court, Escambia County, Florida.

Maxwell & Barrett, trustees Pensacola & L. Railroad Co., to Pensacola Railroad Co.—Recorded May 27, 1878.

This indenture, made on the sixth day of May, A. D. 1878, by A. E. Maxwell and Thomas L. Barrett, as trustees, and the Pensacola and Louisville Railroad Company, witnesseth:

That whereas, by a decree of the circuit court of the second judicial circuit of the State of Florida, sitting for the county of Leon, in chancery, rendered on the 2d day of February, A. D. 1878, it was ordered, adjudged, and decreed that the Pensacola and Louisville Railroad, from its junction with the Mobile and Montgomery Railroad to its terminus in Pensacola Bay, its right of way, road-bed, side tracks, superstructures, piers, engine-houses, stations, warehouses, depots, erections, workshops, locomo-
18 tives, engines, cars, trucks, tenders, equipments, tools, implements, and all goods and chattels employed or used in and about the operations of said road, together with all the franchises, rights, privileges, easements, and immunities of the said Pensacola, & Louisville Railroad Company, or incident to its railway, whether derived or acquired from the State of Florida or the State of Alabama, and also all the tracts or parcels of land embraced in the deed of trust executed by the Pensacola and Louisville Railroad Company to the said trustees on the 10th day of December, A. D. 1872, except such parts and parcels of said land as might have been heretofore sold and conveyed by said Pensacola and Louisville Railroad Company with the concurrence of said trustees, shall be sold at public auction, before the court-house door, in the city of Pensacola, to the highest bidder, for cash, after notice of sixty days, to be published in the Pensacola Gazette, of the time, place, and terms of sale, provided that bonds secured by said trust-deed might be used as cash at a rate proportional to the whole amount of bonds and unpaid coupons issued
19 and the amount of the bid, less such sum in cash as might be necessary to cover and discharge the costs and expenses of executing their trust by said trustees;

And whereas it was further provided by said decree that the said sale should be made by one of said trustees and that both of said trustees, as well as the said Pensacola and Louisville Railroad Company, should join in the execution of conveyances to the purchaser or purchasers of the above mentioned property, franchises, rights, easements, and immunities, whether acquired and derived mediately or immediately from the State of Florida or the State of Alabama by the said Pensacola and Louisville Railroad Company; and the secretary of the said Pensacola and Louisville Railroad Company was required and ordered by said decree to affix the seal of said Pensacola and Louisville Railroad Company to any deed or deeds which said trustees might deem necessary to be executed in fulfillment of said decree;

And whereas all the above described property, franchises, rights, privi-
leges, easements, and immunities were this day offered for sale at
20 public auction before the court-house door, in the city of Pensacola, by the said Augustus E. Maxwell as one of the trustees, after publication of a notice of the time, place, and terms of sale for the space of sixty (60) days in the Pensacola Gazette; and whereas the said Pensacola Railroad Company was the best and highest bidder for the said Pensacola

and Louisville Railroad, its right of way, road-bed, side tracks, superstructures, iron rails, fastenings, bridges, wharves, piers, engine-houses, stations, warehouses, depots, erections, workshops, locomotives, engines, cars, trucks, tenders, equipments, tools, implements, machinery, and all goods and chattels employed or used in and about the operation of said railroad, together with all the rights, privileges, easements, and immunities of the said Pensacola and Louisville Railroad Company, or incident to its road, whether derived or acquired from the States of Florida *and* Alabama; the said Pensacola Railroad Company having bid thereupon the sum of fifty (50) thousand dollars; and whereas also the said Pensacola Railroad Company was the best and highest bidder for each of the
21 tracts of land embraced in the annexed schedule, which are the same referred to in said decree and at the prices therein stated, making in the aggregate the sum of thirty-six hundred and five $\frac{74}{100}$ dollars:

Now, therefore, in consideration of the premises, and of the said sum of fifty-three thousand six hundred and five $\frac{74}{100}$ dollars to us in hand paid in the bonds and coupons above referred to, and cash as required by said decree to cover and discharge the cost and expenses of executing said trust, we, the said Augustus E. Maxwell and Thomas L. Barrett, as trustees as aforesaid, with the concurrence of the Pensacola and Louisville Railroad Co., as required by said decree, have granted, bargained, sold, assigned, and by these presents do grant, bargain, sell, assign, and convey, unto the said Pensacola Railroad Company and its assigns all the above described property, real and personal, rights, franchises, privileges, easements, and immunities, to have and to hold all the said property, franchises, privileges, easements, and immunities, unto the said Pensacola Railroad Company and its assigns forever.

22 In testimony whereof the said Augustus E. Maxwell and the said Thomas L. Barrett, as trustees as aforesaid, have hereunto set their hands and affixed their seals, and the secretary of the said Pensacola and Louisville Railroad Company has also hereunto affixed the seal of said company this sixth day of May, A. D. 1878.

{SEAL OF PENSACOLA & LOUISVILLE RAILROAD CO.} A. E. MAXWELL, [SEAL.]
Trustee, &c.
THOMAS L. BARRETT, [SEAL.]
Trustee, &c.

Signed, sealed, and delivered by the said A. E. Maxwell, as trustee, & by the Pensacola & Louisville Railroad Co., in presence of—
R. L. CAMPBELL.
T. E. JORDAN.

And by Thomas Barrett, as trusteee, in presence of—
VERGUS W. BARRETT.
JOSEPH S. PEROT.

STATE OF FLORIDA,
Escambia County:

Richard L. Campbell, one of the subscribing witnesses to the foregoing deed as to A. E. Maxwell and the Pensacola and Louisville Railroad Company, being duly sworn, says that said deed was executed and delivered to the Pensacola Railroad Company on the day it bears date by the
23 said A. E. Maxwell, as trustee, and the said Pensacola and Louis-

ville Railroad Company in the presence of affiant and T. E. Jordan as subscribing witness.

RICH'D L. CAMPBELL.

Sworn to and subscribed before me this seventh day of May, A. D. 1878.

J. V. POWELL, *J. P.*

CITY OF PHILADELPHIA,
State of Pennsylvania:

I, Thomas L. Barrett, whose seal and signature appear to the foregoing deed, do hereby acknowledge that I, as trustee, executed the same for the uses and purposes therein expressed.

CITY OF PHILADELPHIA,
State of Pennsylvania:

Before the undersigned, on this day, in the city aforesaid, appeared the said Thomas L. Barrett, of whose identity I have satisfactory evidence, and made the foregoing acknowledgment.

In testimony whereof I have hereunto set my hand and affixed my seal this twenty-first day of May, A. D. 1878.

[NOT'L SEAL.] JOSEPH S. PEROT,
Notary Public, Philadelphia, Pennsylvania.

24 CITY OF PHILADELPHIA,
State of Pennsylvania:

The undersigned, prothonotary of the common pleas, do hereby certify that Joseph S. Perot, whose signature and seal appear to the foregoing certificate, is a notary public in and for said city, duly appointed and qualified according to law.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 22d day of May, A. D. 1878.

[SEAL OF COURT.] WILLIAM B. MANN, *Proth'y.*

STATE OF FLORIDA,
Escambia County:

I hereby certify that the foregoing (less schedules of lands not transcribed by me) is a true copy of the deed between the parties therein named, as the same remains of record in my office in deed-book W, at pages 8 to 11.

Witness my hand and seal official this 20th day of March, A. D. 1882.

[SEAL OF COURT.] F. E. DE LA RUA,
Clerk C't Court, Escambia County, Fla.

25 Deed for record, Dec'r 3, '80.—Pensacola Railroad Co. to Louisville & Nashville Railroad Co.—Recorded Dec. 3, 1880.

This deed, entered into this 22d day of October, A. D. 1880, by and between the Pensacola Railroad Company, a corporation created by the State of Florida, of the first part, and the Louisville and Nashville Railroad, a corporation created by the State of Kentucky, of the second part, witnesseth:

That whereas at a full stockholders' meeting of the party of the first part, held on the 22d day of October, A. D. 1880, the following resolution was adopted:

"Resolved, That in lieu of executing a mortgage on the property and franchises of the Pensacola Railroad Company to secure six hundred thousand dollars of forty years' bonds, bearing 5½ per cent. interest, for the purpose of discharging the indebtedness of said Pensacola Railroad Company to Daniel F. Sullivan, as provided by a resolution adopted on the 27th day of February, A. D. 1880, by the board of directors of the said Pensacola Railroad Company, and also in consideration that the Louisville and Nashville Railroad Company shall fully pay, discharge, and satisfy the indebtedness of the said Pensacola Railroad Company to said
26 Sullivan according to the terms and spirit of a contract entered into on the 27th day of February, A. D. 1880, by and between said Sullivan and the said Louisville and Nashville Railroad Company, the stockholders of said Pensacola Railroad Company do hereby authorize the president and secretary thereof to cause a deed of conveyance, under its corporate seal, of all the property, franchises (except the franchise to be and exist as a corporation), rights, and immunities of said Pensacola Railroad Company, to be executed and delivered by the said Pensacola Railroad Company to the said Louisville and Nashville Railroad Company, excepting from said deed the sections of land granted by the United States or the State of Florida to the Alabama and Florida Railroad Company, of which said Pensacola Railroad Company is the mediate assign; and provided that such conveyance shall be subject to the obligation of said Louisville and Nashville Railroad Company, its assigns and successors, justly and equitably to perform the 4th article of the contract between said Sullivan and said Louisville and Nashville Company and the contract founded thereon, made on the twenty-second day of October, A. D. 1880,
27 between said Sullivan and the Pensacola Railroad Company, relating to the transportation of lumber, timber, and logs;"

And whereas the said Pensacola Railroad Company has satisfactory evidence that the said Louisville and Nashville Railroad Company has paid and discharged the above-mentioned indebtedness to said Sullivan:

Now, therefore, in consideration of the premises, and for the further consideration of one dollar by the said party of the second part to the said party of the first part, the receipt of which is hereby acknowledged, the said party of the first part has bargained, sold, and assigned, and by these presents doth bargain, sell, and assign, and convey, unto the said party of the second part, and its assigns and successors, the Pensacola Railroad from its junction with the Mobile and Montgomery Railway to its terminus in Pensacola Bay, its right of way, roadway, side-tracks, superstructures, wharf, engine-houses, stations, warehouses, depots, work-shops, erections, easements, locomotives, engines, cars, trucks, equipments, tools, implements, and goods, chattels, and personalty employed or used in and about the operation or repair of said railroad, together with all the franchises
28 (except the franchise to be and exist as a corporation), rights, privileges, easements, and immunities of said Pensacola Railroad Company, or incident to its railway, whether derived or acquired from the States of Florida or Alabama, excepting from the deed the sections of land granted by the United States or State of Florida to the Alabama & Florida

Railroad Company, of which said Pensacola Railroad Company is the mediate assign. To have and to hold the above bargained and assigned property, rights, franchises, and immunities unto the party of the second part, its assigns and successors, forever, subject to the obligation well and truly to perform the 4th article of the contract between said Sullivan and the party of the second part, dated 27th day of February, A. D. 1880, and the contract founded thereon, made by the party of the first part with said Sullivan, bearing even date herewith, relating to transportation of lumber, timber, and logs.

In testimony whereof the party of the first part has, under the foregoing resolution, caused its corporate seal to be hereunto affixed, attested by its president and secretary, on the day and year above written.

29 { PENSACOLA RAILROAD COMPANY, 1878. } Attest: D. F. SULLIVAN,
President.

Attest:

T. E. JORDAN, *Sec'y.*

Signed, sealed, and delivered in the presence of—
G. A. STANLEY,
T. E. JORDAN.

STATE OF FLORIDA,
Escambia County:

The execution of the foregoing instrument of writing was this day proven before me by G. A. Stanley, a subscribing witness thereto.

Given under my hand and seal official this 3rd day of December, A. D. 1880.

F. E. DE LA RUA,
Clerk Ct. Court.
Per JOHN DE LA RUA,
Deputy Clerk.

STATE OF FLORIDA,
Escambia County:

I hereby certify that the foregoing is a true and correct copy of the deed between the parties therein named, as the same remains of record in my office in book X, at pages 189 to 191.

In witness my hand and seal official this 20th day of March,
30 A. D. 1882.

[SEAL OF COURT.] F. E. DE LA RUA,
Clerk Ct. Court, Escambia County, Fla.

And afterwards, but on the same day last named, came the defendant and filed herein his answer to the bill of complaint in the words and figures following, to wit:

Answer.

Circuit court of the State of Florida, first judicial circuit, Escambia County.
In chancery.

THE LOUISVILLE & NASHVILLE RAILROAD Company
vs.
MANUEL PALMES, COLLECTOR OF REVENUE IN and for Escambia County, and State of Florida.

The answer of Manuel Palmes, collector of revenue in and for Escambia County, and the State of Florida.

This defendant, now and at all times hereafter saving and reserving to himself and to the State of Florida, and to the county of Escambia,
31 of which he is an officer, and for which he is acting in the matter by the said bill *of* complained of, all and all manner of benefit, advantage of exception, otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, and especially all advantage of exception to this honorable court's jurisdiction and power as a court of equity to enjoin the sale of the personal property levied upon and to be sold for taxes by this defendant, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

He admits that he has levied upon and offered for sale on the 3rd day of April, 1882, the engines and cars numbered in the said bill for taxes claimed by the State of Florida and Escambia County to be due from the complainant upon its said property in Escambia County, which defendant avers he has done by the express orders of the governor and comptroller of the State of Florida, who, as defendant is advised and alleges, have given such directions in pursuance of the constitution and laws of
32 Florida and of a joint resolution of the general assembly of Florida, approved March 4th, 1881.

That as to so much of complainant's bill as claims that by acts of the legislature the property of the Alabama and Florida Railroad Company was exempted from taxation for thirty-five years, and that by reason of the Louisville and Nashville Railroad Company purchasing the said same at a foreclosure sale, and the Pensacola Railroad subsequently purchasing the same at subsequent foreclosure sale, and the complainant claiming to have purchased the same, with the franchises, privileges, easements, and immunities which were held by the Pensacola Railroad Company, from the said Pensacola Railroad Company in manner and form as by said bill stated in the 2d, 3rd, & 4th, 5th, 6th, 7th, and 8th paragraphs of said bill, the complainant is exempted from the payment of the taxes demanded by the State of Florida and county of Escambia, and by this defendant sought to be collected by the levy and proposed sale complained of, this defendant claims all the benefit he could have from a demurrer interposed thereto.

And defendant says that he is advised that if, as claimed by complainant, the legislature of Florida, by the several acts cited by com-
33 plainant, did intend to exempt the property of the Alabama & Florida Railroad Co. from taxation for the term of thirty-five

years, the said legislature transacted its constitutional powers, and the said acts cannot be construed or held as exempting the property of the Alabama & Florida Railroad Co. from taxation, as claimed by complainant's bill, for defendant alleges that said exemption was not extended to all railroad companies and their property in the State of Florida; that as to the alegations contained in paragraph 7 of complainant's bill, defendant has not sufficient information to either admit or deny the same and demands strict proof thereof, and also of the allegations of fact contained in paragraph 8 thereof, especially that said railroad was or is constructed as required by said acts and amendments thereto.

That defendant is advised and charges that the alleged grant of exemption, if made, was made gratuitously and without consideration, and if there was any consideration it was not such consideration as to preclude the people of Florida and their legislature by their subsequent organic law and legislation from subjecting even the said Alabama & Flor-
34 ida Railroad Co. to the same burdens as are imposed upon other corporations or natural persons who enjoy the benefits of State and county governments; that even if the said acts cited by complainant's bill did intend and did constitutionally exempt the property of the Alabama & Florida R. R. Co. from taxation, as claimed by complainant in its bill.

This defendant, further answering, says that he is advised that such exemption did not pass by the several mesne conveyances to the complainant, for this defendant avers that by said acts there was only exempted the capital stock, railroad, and other property of the Alabama & Florida Railroad Co.; and defendant avers that with the exception of a part of the right of way, and probably a portion of the road-bed, and perhaps a few other insignificant items, that the railroad and property upon which the taxes are now sought to be collected are not the same property which was the property of the said Alabama & Florida Railroad Company to which complainant's bill claims the exemption attached, and defendant avers that complainant has not proffered or tendered the taxes upon any part of the taxed property.

35 Defendant, further answering, says that as to the 9th paragraph of said complainant's bill, he denies that by the alleged purchase from the Pensacola Railroad Company the complainant became entitled to all the rights, property, privileges, franchises, and immunities of the said Alabama & Florida Railroad Company, the Pensacola & Louisville Railroad Company, & the Pensacola Railroad Company, under the various acts incorporating said companies, and acts amendatory of the same, as by complainant in his bill alleged. On the contrary, your orator is advised and charges that under the laws of Florida the complainant acquired nothing more than the property purchased by it from the chartered Pensacola Railroad Co., and acquired none of the Pensacola R. R. Co.'s franchises, privileges, or immunities as a railroad corporation, duly chartered, empowered to exercise the franchises and enjoy the privileges and immunities thereof in the State of Florida.

Defendant, further answering, denies that the said railroad, together with its locomotives, passenger, freight, and other cars, machine-shops, upon which taxes are claimed and demanded by the said State of Florida and county of Escambia, including the property levied upon by this de-

36 fendant, are exempt from taxation as alleged in the 10th paragraph of complainant's bill.

And defendant, further answering, says as to complainant's allegation and charge in the 11th paragraph of its said bill, the same is not true, for he says assessments were made of said railroad and property for the years 1879 and 1880, and this defendant is authorized in demanding taxes for said years.

Defendant, further answering, says that as to the allegations of the complainant in the 12th paragraph of its bill, he claims all the benefits of a demurrer thereto; but says that the engines and cars levied upon by him are only a very small portion of the engines and cars owned by complainant, and the sale of them can and will not greatly impede or embarrass the business of complainant, and cannot and will not cause it irreparable injury.

And as the charge that this respondent is without property, and unable to respond to complainants in a suit at law for damages, this respondent says that he is acting under express and direct orders of the State of Florida, given by the governor and comptroller, under directions from its legislature, and that the State of Florida is in no wise unable to respond
37 to complainant for any damages the complainant may suffer from the faithful execution of the laws and will of the State.

And as to the charge that the proceedings complained of will tend to cloud the title of the complainant, the defendant says that the property levied upon to be sold is personal property only, and defendant is advised that this court as a court of equity has no jurisdiction to and will not enjoin the sale of personal property for the purpose of collecting taxes upon any of the grounds set forth in complainant's bill of complaint, and especially not upon the pretence that such sale will "cloud" complainant's title.

And this defendant, further answering, denies all and all manner of unlawful combinations and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint contained material or necessary for this dedefendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, & prove as this
38 honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

E. A. PERRY,
Sol'r for Def't.

STATE OF FLORIDA,
Escambia County:

Manuel Palmes, collector of revenue in and for said State and county, being duly sworn, says that the matters alleged in the foregoing answer of knowledge are true, and those alleged on information he believes to be true.

M. PALMES.

Sworn and subscribed before me this 25th day of March, A. D. 1882.
T. E. DE LA RUA,
Clerk Ct. Court.

And on the same day last named came the parties by their sol'rs, and the following order was made:

Interlocutory injunction.

STATE OF FLORIDA,
Escambia County:

Circuit court.

THE LOUISVILLE & NASHVILLE RAILROAD CO.
vs.
MANUEL PALMES, COLLECTOR OF REVENUE OF Escambia County. } Bill for injunction.

39 This case came on to be heard on motion of plaintiff for temporary injunction, and was heard upon bill and answer, and argued by counsel, and thereupon, on consideration thereof, it is ordered, adjudged, and decreed that the defendant, Manuel Palmes, collector as aforesaid, be, and he is hereby, enjoined and restrained from selling the property of plaintiff seized for taxes by said defendant until the further order of this court, provided said plaintiff shall give bond, with good securities, to be approved by the clerk, in the sum of fifteen thousand dollars, conditioned to pay said taxes and all costs of this proceeding in case this injunction be finally dissolved.

At Chambers, March 25, 1882.

A. E. MAXWELL, *Judge.*

And at another day, to wit, on the 27th day of March, A. D. 1882, came the plaintiff herein and filed his replication to defendant's answer in the words and figures following, to wit:

Replication.

Circuit court of Escambia County. In chancery.

THE LOUISVILLE AND NASHVILLE R. R. Company
vs.
MANUEL PALMES, COLLECTOR OF REVENUE for Escambia County.

40 The replication of the Louisville & Nashville R. R. Company, complainant, to the answer of Manuel Palmes, collector of revenue, defendant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and maintain its said bill to be true, certain, and sufficient in law to be answered unto, and that the answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that there is any other matter or thing whatsoever in the said answer contained material or effectual in

the law to be replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

G. A. STANLEY,
Sol'r for Complainant.

41 And on the said day last named the said complainant filed his notice to defendant of making application to the court for a modification of the injunction & order made in the cause on the 25 March, 1882, and which notice, with acceptance of service thereof by defendant, is in the words and figures following, to wit:

Notice of application for modification of injunction & order.

Circuit court of Escambia County. In chancery.

THE LOUISVILLE & NASHVILLE R. R. COMpany
vs.
MANUEL PALMES, COL'R OF REVENUE FOR Escambia County.

You will please take notice that I will, on Friday, the 31st instant, apply to the Hon. A. E. Maxwell, judge of said court, wherever he may be, for a modification of the injunction & order made in said cause on the 25th instant.

G. A. STANLEY,
Sol'r for Complainant.

To E. A. PERRY, Esq'e,
Sol'r for Defendant.

Acceptance of service of notice.

I accept service of a copy of within notice.
March 27th, 1882.

E. A. PERRY, *For Def't.*

And at another day *day*, to wit, on the 31st day of March, came the parties by their respective solicitors, and the following order was made:

42 *Order modifying injunction.*

STATE OF FLORIDA,
Escambia County:

Circuit court.

THE LOUISVILLE & NASHVILLE RAILROAD Company
vs.
MANUEL PALMES, AS COLLECTOR REVENUE, &c.
Suit for injunction.

This case came on to be heard on the motion of the plaintiff to have

the injunction granted on the 25th inst. modified as to the condition of the bond therein required to be given, and was argued by counsel; and thereupon, on consideration thereof, it is ordered, adjudged, and decreed that said injunction do take effect upon the giving of the bond thereby required, conditioned as hereinafter directed, instead of as by said injunction directed, viz, conditioned to pay the taxes claimed by the defendant as collector of revenue, or so much thereof as may be adjudged to be payable, and all costs of this proceeding in case the said injunction be finally dissolved and the plaintiff adjudged not to be exempt from taxes, as by the bill claimed.

At Chambers, March 31st, 1882.

A. E. MAXWELL, *Judge.*

43 And afterwards, to wit, on the 3rd day of April, A. D. 1882, came the complainant and filed its bond for injunction in the words and figures following, to wit:

Bond for injunction.

Know all men by these presents that we, the Louisville & Nashville Railroad Company, and D. F. Sullivan, and W. D. Chipley, are held and firmly bound unto Manuel Palmes, collector of revenue for Escambia County, in the sum of fifteen thousand dollars, for the payment whereof well and truly to be made we bind ourselves and heirs, executors, administrators, and assigns, jointly, firmly and severally by these presents. Signed and sealed this 1st day of April, A. D. 1882.

The condition of this obligation is such that whereas the Louisville & Nashville R. R. Company have prayed for and obtained an injunction against said Manuel Palmes, collector of revenue for Escambia County, restraining him from the collection of State and county taxes assessed against said company for the years 1879, 1880, & 1881: Now, if said Louisville & Nashville Railroad Company shall pay the taxes claimed by the said Manuel Palmes, as collector of revenue, or so much
44 thereof as may be adjudged to be payable, and all costs of this proceeding in case the injunction be finally dissolved and the plaintiff adjudged not to be exempt from the taxes by the bill claimed, then this obligation to be void; else to remain in full force and effect.

LOUISVILLE & NASHVILLE R. R. Co., [SEAL.]
By E. O. SALTMARSH, *Supt.*
D. F. SULLIVAN. [SEAL.]
W. D. CHIPLEY. [SEAL.]

Taken and approved by me April 3, 1882.

T. E. DE LA RUA,
Clerk C't Court.

And on the same day last named a writ of injunction was issued, which, with endorsements thereon of acceptance of service thereof, is in the words and figures following, to wit:

Writ of injunction.

STATE OF FLORIDA,
Escambia County:

Circuit court.

THE LOUISVILLE & NASHVILLE RAILROAD CO.
vs.
M. PALMES, COLLECTOR OF REVENUE OF Escambia County.

In the name of the State of Florida, to M. Palmes, collector of revenue of Escambia County, Florida, greeting:

45 Upon the order of the Hon. A. E. Maxwell, judge of the 1st judicial circuit of Florida, dated March 25th, 1882, which order was modified as to condition of bond by order of said judge of the 31st March, 1882, and the plaintiff herein having complied with said order by giving the bond thereby required to be given:

You are hereby enjoined and restrained from selling the property of plaintiff seized for taxes by you until the further order of this court.

Herein fail not.

In witness my hand and seal official as clerk of said court this 3rd day of April, A. D. 1882.

[SEAL OF COURT.] F. E. DE LA RUA,
Clerk C't Court.

Acceptance of service of injunction.

Service accepted.
April 3, 1882.

M. PALMES,
C. R. Es. Co.

And afterwards, to wit, on the 14th day of April, A. D. 1882, came the defendant, by his solicitor, and entered and filed his appeal from the interlocutory order or injunction made herein, in the words and figures following, to wit:

46 *Entry of appeal.*

Circuit court, first judicial circuit, State of Florida, Escambia County.

THE LOUISVILLE & NASHVILLE RAILROAD Company
vs.
MANUEL PALMES, COLLECTOR OF REVENUE IN and for Escambia County and State of Florida.

The said defendant hereby enters his appeal from the interlocutory order or injunction made by the judge of said court in this cause upon a hearing upon complainant's bill and defendant's answer herein on the 25th

day of March, 1882, and from the order of said judge herein made at chambers, March 31, 1882, modifying his said order of 25th March, 1882, and the injunction issued thereon April 3rd, 1882.

And in pursuance hereof the clerk of said court will please issue a citation requiring the Louisville & Nashville Railroad Company to be and appear at the next term of the supreme court of Florida, to be holden in Tallahassee on the 2d Tuesday of June, 1882, to show cause, if any it can, why the orders and proceedings herein appealed from should not be reversed and vacated.

47

E. A. PERRY,
Solicitor for Defendant.

Ap'l 14, 1882.

And afterwards, to wit, on the 25th day of April, A. D. 1882, a citation to the plaintiffs was issued which, with the acceptance of service of notice thereof, is in the words and figures following, to wit:

Citation.

Escambia County circuit court, State of Florida.

THE LOUISVILLE & NASHVILLE R. R. COMPANY
vs.
MANUEL PALMES, COLLECTOR OF REVENUE for Escambia County.

In the name of the State of Florida to The Louisville & Nashville Railroad Company, greeting:

You are hereby required to be and appear before the supreme court of Florida, to be held on the second Monday of June next, being the 13th day of said month, at Tallahassee, to show cause, if any you can, why the interlocutory order or injunction made at chambers by the Hon.

48 A. E. Maxwell, judge of our said court, on the 25th day of March, 1882, and the order of said judge herein made, also at chambers March 31, 1882, modifying his said order of 25th March, 1882, and which orders granted said interlocutory injunction, should not be reversed.

In witness whereof I hereunto set my hand and seal official this 25th day of April, A. D. 1882.

F. E. DE LA RUA,
Clerk Ct. Court.

Acceptance of notice of citation.

I accept service of notice of the within citation, March 26th, 1882.

G. A. STANLEY,
Sol'r for Complainant.

Certificate to record.

STATE OF FLORIDA,
Escambia County:

I, F. E. De la Rua, clerk of the circuit court of the State of Florida,

first judicial circuit in and for the county of Escambia, do hereby certify that the foregoing pages, numbered from one (1) to (36) thirty-six inclusive, constitute a true copy of all the proceedings and a correct transcript of the record of the judgment in the case of the Louisville and
49 Nashville Railroad Company, complainant, and Manuel Palmes, collector of revenue for Escambia County, defendant, as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this the 26th day of April, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL OF COURT.] F. E. DE LA RUA,
Clerk of the Circuit Court for the County Court of Escambia.

And afterwards, and on the same day last named, came the appellant and filed herein his petition of appeal from the interlocutory order of the said circuit court of the State of Florida, awarding an injunction, which said petition of appeal is in the words and figures as follows, to wit:

From circuit court, first circuit, for Escambia County.

THE LOUISVILLE & NASHVILLE RAILROAD Company, appellee,
vs.
MANUEL PALMES, COLLECTOR OF REVENUE FOR State of Florida and Escambia County, appellant.

50 To the honorable the supreme court of the State of Florida:

The petition of the above-named def't, in the court below, and appellant, respectfully showeth:

That in the said circuit court the judge thereof upon hearing of the bill of said complainant and appellee and the sworn answer of your petition', both filed upon the 25th day of March, 1882, made the order and decree of the same date, and afterwards, upon the 31st day of March, 1882, upon motion of complainant, modified the said order of 25th of March, and upon said last-mentioned order there issued from said court the writ of injunction, dated April 3rd, 1882. All of which appear in the transcript of the record of said cause herewith filed.

That the said order of said judge, of date March 25, 1882, and the said order modifying the same, of date March 31st, 1882, and the injunction issued thereon April 3rd, 1881, are as your petitioner is advised and humbly submits erroneous, and the same and all of them ought to be reversed.

Your petitioner, therefore, humbly prays this honorable supreme
51 court that the said bill and answer may be reheard before your honors, and that the said orders, decrees, and injunction may be vacated, reversed, and set aside, and that your petitioner may have such other and further relief as to your honors may seem meet and equitable.

And your petitioner will ever pray, &c.

E. A. PERRY,
Solicitor for Appellant.

MAY 25, 1882.

Whereupon came the parties, both appellant and appellees, in the said cause, by their respective counsel, and submitted their cause to the said supreme court upon the said transcript of the record and oral arguments.

And at a subsequent day, to wit, on the 28th day of July, A. D. 1882, judgment was rendered by the said supreme court of the State of Florida, in words and figures as follows, to wit:

MANUEL PALMES, AS COLLECTOR OF REVENUE for the State of Florida and the county of Escambia, appellant,
vs.
THE LOUISVILLE AND NASHVILLE RAILROAD Company, appellee.

Upon appeal from a decree of the circuit court for the county of Escambia.

52 This cause having been submitted to the court at a previous day of this term upon the transcript of the record of the decree aforesaid and the arguments of counsel, and the court being now fully advised of its judgment to be given in the premises, it seems to the court that there is error in the said decree.

It is thereupon considered, ordered, and decreed by the court that the order of the circuit court awarding an injunction is reversed and set aside, the injunction is dissolved, and the bill is dismissed, and that the appellant do recover of the appellee his costs by him in this behalf expended, taxed at the sum of .

E. M. RANDALL,
Chief Justice S. C.

And afterwards, to wit, on the 29th day of July, A. D. 1882, came the appellees, by counsel, and entered and submitted to the court their motion for leave to file a petition for a rehearing, in the words and figures as follows, to wit:

53 Supreme court of Florida. June term, A. D. 1882.

MANUEL PALMES, COLLECTOR OF REVENUE OF Escambia County, appellant,
vs.
LOUISVILLE & NASHVILLE RAILROAD CO., APpellee.

Now comes the appellee and moves the court to grant leave to file a petition for rehearing of said cause on or before the 1st day of the next term of said court.

July 29th, '82.

D. S. WALKER, JR., AND
L. B. WOMBWELL,
For Appellee.

Whereupon the following order of court was entered on the 1st day of

August, A. D. 1882, denying the said motion, in the words and figures as follows, to wit:

MANUEL PALMES, COLLECTOR OF REVENUE FOR Escambia County, appellant,
vs.
THE LOUISVILL' & NASHVILLE RAILROAD COMpany, appellees.

54 Motion for leave to file a petition for rehearing having been heretofore entered and submitted to the court, was this day denied, and a rehearing was refused.

And afterwards, to wit, on the 2nd day of August, A. D. 1882, came the appellee, the Louisville and Nashville Railroad Company, by counsel, and filed in open court before the chief justice their petition for the allowance of a writ of error to said judgment, returnable to the next term of the Supreme Court of the United States, which petition was in the words and figures as follows, to wit:

Supreme court of the State of Florida, June term, A. D. 1882.

MANUEL PALMES, COLLECTOR OF REVENUE FOR the State of Florida and for the county of Escambia, in and for Escambia County, appellant,
against
THE LOUISVILLE AND NASHVILLE RAILROAD Company, respondent.

55 To the honorable Edwin M. Randall, chief justice of the supreme court of the State of Florida:

The petition of the Louisville and Nashville Railroad Company, respondent in the above-stated case, respectfully showeth, that a final decree was rendered by the said supreme court in the above-stated case on the 28th day of July, A. D. 1882, wherein was drawn in question the validity of a statute of the State of Florida, to wit, "An act entitled an act for the assessment and collection of revenue," approved March 5th, 1881, being chapter 3219 of the laws of Florida, wherein and whereby certain taxes for State and county purposes were imposed upon the line of railroad extending from the city of Pensacola, in the State of Florida, to the northern boundary of the State of Florida, in the direction of Montgomery, Alabama, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity, all of which appears of record in the said supreme court.

Your petitioner therefore prays your honor to allow a writ of error to the respondent in the above-stated case returnable to the next term of the Supreme Court of the United States.

56 The prayer of your petitioner being granted he will ever pray, &c.

G. A. STANLEY,
Attorney for Respondent.

Whereupon on the same day the prayer of the petitioner was granted by an order in words and figures as follows, to wit:

MANUEL PALMES, COLLECTOR OF REVENUE FOR the State of Florida and Escambia County, in and for the county of Escambia, appellant,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD Company, appellees.

And now come the appellees, by their counsel, Mr. G. A. Stanley, and file their petition praying for a writ of error to be allowed by this court to the final decree rendered on the 28th July, A. D. 1882, returnable to the next term of the Supreme Court of the United States.

Whereupon it is considered and ordered by the court that the prayer of the petitioners is granted and the writ of error is allowed.

E. M. RANDALL,
Chief Justice.

57 And thereafter upon the same day, upon presentation to the chief justice of said petition for the allowance of a writ of error the same was allowed by the chief justice, as appears upon the original writ of error as accompanying this return, and upon the same day a citation was allowed by the chief justice, as appears upon the original citation accompanying this return and the writ of error aforesaid.

And thereafter, to wit, on the 21st day of August, A. D. 1882, and during the term of the said court, the original bond of the plaintiff in error in this writ of error, approved by the Hon. E. M. Randall, chief justice of the supreme court of the State of Florida, was filed in words and figures as follows, to wit:

58 Supreme court of the State of Florida.

MANUEL PALMES, COLLECTOR OF REVENUE for Escambia County, appellants,
vs.
THE LOUISVILLE & NASHVILLE R. R. Company, appellee.

Know all men by these presents that the Louisville & Nashville Railroad Company, W. D. Chipley, and A. V. Clubbs, are held and jointly bound unto Manuel Palmes, collector of revenue for Escambia County, in the sum of twenty thousand dollars, to be paid to the said Manuel Palmes, collector of revenue for Escambia County, or his successors in office, or his executors or administrators, to which payment, well & truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 5th day of August, A. D. 1882.

Whereas the above-named The Louisville & Nashville R. R.
59 Company hath prosecuted a writ of error to the Supreme Court of

the United States to reverse the decree rendered in the above-entitled cause by the supreme court of the State of Florida.

Now, therefore, if the above-named The Louisville & Nashville Railroad Company shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

LOUISVILLE & NASHVILLE R. R. CO.,
By E. O. SALTMARSH, *Supt.* [SEAL.]
W. D. CHIPLEY. [SEAL.]
A. V. CLUBBS. [SEAL.]

I consider these sureties sufficient.

E. A. PERRY, *Att'y, &c.*

AUG. 7TH, 1882.

STATE OF FLORIDA,
Escambia County:

W. D. Chipley maketh oath that after the payment of all his
60 just debts and liabilities and exemptions under the law, he is worth in visible property subject to levy and execution the sum of twenty thousand dollars.

W. D. CHIPLEY.

Sworn to and subscribed before me this 7th Aug't, A. D. 1882.
[SEAL.] F. E. DE LA RUA,
Clerk C't Court, Escambia County, Fla.

STATE OF FLORIDA,
Escambia County:

A. V. Clubbs maketh oath that after the payment of all his just debts and liabilities and exemption under the law, he is worth in visible property subject to levy and execution the sum of fifteen thousand dollars.

A. V. CLUBBS.

Sworn to and subscribed before me this 7th Aug't, A. D. 1882.
[SEAL.] F. E. DE LA RUA,
Clerk C't Court, Escambia County, Fla.

61 I, Charles H. Foster, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing pages, numbered from one (1) to sixty (60) inclusive, constitute a true copy of all the proceedings and a correct transcript of the record of the judgment in the case of Manuel Palmes, collector of revenue for Escambia County, in the State of Florida, appellant, and the Louisiana and Nashville Railroad Company, appellees, as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of Florida, at Tallahassee this the second day of October, A. D. one thousand eight hundred and eighty-two.

[SEAL.] CHAS. H. FOSTER,
Clerk Supreme Court of the State of Florida.

62 The foregoing transcript of the record of the proceedings of the supreme court of the State of Florida in the case of Manuel Palmes, collector of revenue of Escambia County vs. The Louisville and Nashville Railroad Company, is transmitted to the Supreme Court of the U. S. in obedience to a writ of error issued herein, the original of which is hereto attached.

63 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Florida, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Florida before you or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between Manuel Palmes, collector of revenue for the State of Florida, and for the county of Escambia, in and for Escambia County, and the Louisville and Nashville Railroad Company, wherein was drawn in question the validity of a statute of and an authority exercised under said State of Florida on the ground of their being repugnant to the Constitution and laws of the United States and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said The Louisville and Nashville Railroad Company, as by its complaint appears:

64 We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the second day of August, in the year of our Lord one thousand eight hundred and eighty-two, and clerk of the circuit court

65 of the United States for the fifth judicial circuit, northern district of Florida.

CHAS. H. FOSTER,
Clerk of the United States Circuit Court for the Fifth Judicial Circuit of the Northern District of Florida.

Writ of error allowed, August second, A. D. eighteen hundred and eighty-two.

EDWIN M. RANDALL,
Chief Justice of the Supreme Court of the State of Florida.

66 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Manuel Palmes, collector of revenue for the State of Florida and for the county of Escambia, in and for Escambia County, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Florida, wherein the Louisville and Nashville Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the final decree therein rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Edwin M. Randall, chief justice of the supreme court of the State of Florida, this second day of August, in
67 the year of our Lord one thousand eight hundred and eighty-two.

EDWIN M. RANDALL,
Chief Justice of the Supreme Court of the State of Florida.

On this 11th day of August, in the year of our Lord one thousand eight hundred and eighty-two, personally appeared U. D. Malay before me, the subscriber, and makes oath that he delivered a true copy of within citation to Manuel Palmes, collector of revenue for the State of Florida & Escambia County.

[SEAL.]

F. E. DE LA RUA,
Clerk C't Court Escambia County, Fla.

68 Supreme court of Florida, June term, A. D. 1882.

MANUEL PALMES, AS COLLECTOR OF REVENUE for the State of Florida and Escambia County, appellant,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD Company, respondent.

WESTCOTT, J.:

The material question involved in this case, the one which the State and the Louisville and Nashville Railroad Company ask consideration of here, is, whether the line of railway extending from Pensacola Bay to the north line of the State of Florida, leading in the direction of Montgomery, Ala., its fixtures and appurtenances, and property of every description, is exempt from taxation for the period of thirty-five years from its completion. This question was involved in the case of Gonzales vs. Sullivan, 16 Fla., 791, and with the lights then before us we held that it was.

After careful investigation, we there held that the exemption allowed under the 18th section of the internal improvement act was not a privilege or immunity granted to the corporation originally owning the road, but a privilege annexed by the terms which created it, and the circumstances under which it was made, to the road and property appurtenant thereto, as distinct from a franchise, privilege, or right restricted in its beneficial operation to the corporation which claimed to own the road. We held that it was not a privilege or immunity appurtenant only to the then ownership of the road, but that the immunity attached to the road at the time it was made a part of the "system" of internal improvements of this State, and that in order to complete the system and encourage any corporation owning

the road to construct it, an exemption of the property for thirty-five years after completion was intended by the legislature. We held that the exemption attached to the rem; that such exemption vested in contract followed the property; that a subsequent levy and collection of taxes would impair the obligation of the contract; and that, in obedience to the limitation of the Constitution of the United States upon the power of the State in that behalf, the collection of a tax upon the road and its appurtenances should be enjoined. As the matter was then presented this was our conclusion. We cannot state more clearly the reasons given for that conclusion then than they are stated in the case referred to, and we refer to that case for the basis of our then views to the effect stated. The question, as we conceived it to be, was whether it was an immunity from taxation attached to the property, believing, as we did, that it would make no difference as to the character of the party in whose favor it was to operate.

This case is now presented to us under circumstances in some respects unlike those brought to our attention in the case of Gonzales vs. Sullivan. It is insisted:

First. That the 18th section of the internal-improvement act, which grants the immunity from taxation, was in conflict with the constitutional limitations upon legislative power then existing under the constitution of this State in the matters of taxation and the amendment of charters of corporations.

Second. That since the decision of this court in the case stated the Supreme Court of the United States has expressed views in conflict with our conclusion in that case, and that in deference to that court, the admitted final jurisdiction to determine questions connected with the matter of the obligation of contracts, this court should follow that decision. In addition to this, it is insisted that this case is here at the instance of the legislative and executive departments of the State government, and that by their action they have affirmed that this road and its appurtenances are subject to taxation.

To the first question:

The provisions of the constitution of 1839 of this State in reference to this subject were as follows:

SECTION 2. Article XI.—"A liberal system of internal improvements being essential to the development of the resources of the country shall be encouraged by the government of this State, and it shall be the duty of the general assembly, as soon as practicable, to ascertain by law proper objects of improvement in relation to roads, canals, and navigable streams, and to provide for a suitable application of such funds as may be appropriated for such improvements."

SECTION 2. Article XIII.—"The general assembly shall pass no act of incorporation or make any alteration therein unless with the assent of at least two-thirds of each house, and unless public notice in one or more newspapers in the State shall have been given for at least three months immediately preceding the session at which the same may be applied for."

SECTION 13. Article XIII.—"The general assembly shall not pledge the faith and credit of the State in aid of any corporation whatsoever."

SECTION 1. Article VIII.—"The general assembly shall devise and adopt a system of revenue having regard to an equal and uniform mode of taxation, to be general throughout the State."

By reference to the charter of the corporation owning this road at the time it accepted the provisions of the internal-improvement act of January 6, 1855, chap. 610, Laws of Florida, and to the interna-limprovement law, it will be seen that the latter act operated to amend the charter in many material respects. We think it, therefore, by no means clear, looking alone to the restrictions contained in section 2 of article xiii of the constitution, that the internal improvement act was constitutional so far as it proposed to amend the charters of the several corporations accepting its provisions. When, however, this clause, section 2, article xiii, is construed with section 2, article xi, we think there can be no doubt of the constitutionality of the internal-improvement act so far as this matter is concerned. By that clause (section 2, article xi) it is made the "duty of the general assembly, as soon as practicable, to ascertain by law proper objects of improvement in relation to roads, canals, and navigable streams; and the government of the States is directed to encourage a liberal system of such improvements. Such improvements are usually accomplished through the instrumentality of corporations having the franchises to operate such roads, to collect tolls, and the other franchises usually granted by the State to corporations of this character. At the time when the general assembly droposed to inaugurate this system and obey the command of the constitution, the right to construct the roads which it was proposed to embrace within the system had been given to several corporations. A very proper, perhaps the best, method of discharging the duty was to aid these corporations in constructing these roads; and if the legislature was prohibited from using this method on account of the provisions of section 2, article xii, of the constitution, it is clear that the discharge of its duty, so far as the use of this method was concerned, would have been controlled by the discretion of the corporations owning them. In other words, the legislature could not have carried out its plain duty under the constitution unless and until these corporations gave this notice. And as the notice required must, as a matter of course, indicate the nature of the amendments desired, it would result that the legislature could have devised only such a system and extended only such aid as the corporations themselves "applied for." No such limitation or condition was attached by the constitution to the carrying out of this great public duty and trust by the State. It was not intended that the State was to be thus limited in its powers by the discretion of corporations.

The one clause here, section 2, article xi, contemplated legislation as general in its operation and character as to the corporations embraced within it as the system devised, measured by its comprehensiveness and necessities, required. As to such legislation no notice was required. The other clause, section 2, article xiii, contemplated amendments desired by a particular corporation in matters concerning its relations to its stockholders and the people, disconnected from such legislation as was materially connected with and concerned the general system which it was the duty of the State to inaugurate and encourage.

Again, if the internal-improvement act, in the matter of exemption from taxation, is in conflict with the limitation contained in this clause of the constitution, then that act, so far as it is the source of power to the railroad companies to issue what are known as internal-improvement bonds, is likewise within such limitation. Every department of the State government

for over twenty years has recognized the constitutionality of these bonds. The highest courts of the State and Federal Governments have passed judgments based upon a like view, and millions of money have changed hands in the same manner. All this is at least very suggestive of the conclusion that no one has seriously entertained the view that these bonds were ultra vires the corporations issuing them. In no adjudicated case do we find the question even raised. Of section 13, article xiii, which is not insisted upon here by the State as such limitation upon the power of the legislature as prevented it from granting the exemption from taxation, here questioned, we say nothing by way of argument, as it is very evident that it has nothing to do with the question.

This brings us to the consideration of section 1, article viii, of the constitution. It is: "That the general assembly shall devise and adopt a system of revenue, having regard to an equal and uniform mode of taxation, to be general throughout the State."

A statement of the constitutional provisions of the several States in reference to the subject of taxation, and the decisions of their courts as to the matter of exemptions thereunder, will aid us in stating the rule upon the subject under our own:

WISCONSIN.—"The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall prescribe." Section 1, article viii, constitution of 1848, admitted, in Knowlton vs. Supervisors of Rock County, 9 Wisconsin, 424, that there might be an absolute exemption, and held that property cannot be classified and taxed as classed by different rules. Held also, in The Attorney General vs. The Winnebago Lake and Fox River Plank Road Company, 11 Wisconsin, 35, that an act of the legislature commuting all taxes upon plank and railroad companies for one per cent. upon earnings was unconstitutional, but admitted the right to exempt absolutely. See Gilman vs. The City of Sheboygan, 1 Black, U. S., 514, where the Wisconsin cases are collected.

MISSOURI.—"All property subject to taxation in this State shall be taxed in proportion to its value." Held, in Hamilton and Treat vs. St. Louis County Court, 15 Mo., 1, that the constitution is mandatory upon the legislature when exercising the taxing power; that "what property shall be subject to taxation is left to their discretion, but when they have selected the subjects the rule for assessing the tax is in proportion to the value of the property."

ILLINOIS.—The early constitution of this State provided that "the mode of levying a tax shall be by valuation, so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession. Held, in State Bank of Illinois vs. The People, 4 Scammon, 303, that the lands and other property of the State Bank of Illi-
69 nois might be exempted from all taxes. The statute sustained authorized commutation of all taxes for one-half per cent. on the amount of capital stock annually paid in.

KANSAS.—"The legislature shall provide for a uniform and equal rate of assessment and taxation; but all property used exclusively for State, county, municipal, literary, educational, scientific, religious, benevolent, and charitable purposes, and personal property to the amount of at least two hundred dollars for each family, shall be exempt from taxation." Considering the question whether the legislature could legally exempt any property from taxation other than that expressly named in the constitu-

tion, the supreme court of that State, in Frances, treas., vs. A., T. and S. F. Railroad Co., 19 Kan., 310, say: "There is, in terms, no prohibition in such exemption, and as to personal property the language of the constitution seems to imply the existence of a power to exempt." It says: "All property used, * * * and personal property to the amount of at least two hundred dollars for each family, shall be exempted from taxation." The court, after calling attention to the provisions of the constitutions of Arkansas, 1868; Illinois, 1870; Louisiana, 1868; Minnesota, 1857; Mississippi, 1868; Missouri, 1865; North Carolina, 1868; Tennessee, 1870; Virginia, 1870, says: "In all these provisions will be noticed either an express direction to tax all property, or an express prohibition on exempting any other than certain specified property. Our constitution contains neither. Does it mean the same without as those do with? The positive language of these several sections sustains, if it does not compel, the positive assertions of the various decisions cited by counsel." These decisions held that the constitution prohibited exemptions.

MISSISSIPPI.—Section 13, Article XII, Constitution—"The property of all corporations, for pecuniary profits, shall be subject to taxation, the same as that of individuals." Section 20, Article XII, Constitution—"Taxation shall be equal and uniform throughout the State. All property shall be taxed in proportion to its value, to be ascertained as directed by law." In the case of the Mississippi Mills Company vs. W. W. Cook, tax-collector, 56 Miss., 41, the supreme court of that State held that the requirement is not that the property of all corporations for pecuniary profits shall be subjected to taxation, but that it shall be subject, that is, liable, to taxation. That the legislature may exempt property of a particular class, whether the owners be corporations or natural persons, but such property could not be placed beyond the taxing power. That the words "all property shall be taxed in proportion to its value" do not require that all property shall be taxed and deny to the legislature the right to exempt any. That the legislature may exempt property of a certain class or property used for a certain purpose.

ALABAMA.—Sec. 1, Art. XIII—"Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered, amended, or repealed."

Sec. 4, Art. XIII.—"The property of corporations now existing or hereafter created shall forever be subject to taxation, the same as property of individuals, except corporations for educational and charitable purposes."

In the case of the Mayor of Mobile vs. Stonewall Insurance Company, 53 Ala., 580, it was held that it was not competent for the general assembly in the imposition of taxes to distinguish or discriminate in favor of corporate property subject to taxation, and that if property of a particular kind is subject to taxation and owned by a corporation, it must bear the rate of taxation imposed on individuals. This decision and the case of the City of Davenport vs. The C., R. I. & P. R. R. Co., 38 Iowa, 643, seem to conflict to some extent with the case cited from Mississippi.

ILLINOIS.—"The general assembly shall provide for levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his or her property. * * * But the general assembly shall have power to tax peddlers, auctioneers, * * * and persons using and exercising franchises and privileges in such manner as they

shall from time to time direct." "The specifications of the objects and subjects of taxation shall not deprive the general assembly of the power to require other objects or subjects to be taxed in such manner as may be consistent with the principles of taxation fixed in this constitution." Held in the Illinois Central Railroad Company vs. The County of McLean, 17 Ill., 291, that "it was within the constitutional power of the legislature to commute the general rate of taxation for a fixed sum," and that "the provisions in the charter of the Illinois Central Railroad Company exempting its property from taxation upon the payment of a certain proportion of its earnings are constitutional." To the same effect see Hunsacker, sheriff, vs. Wright, 30 Ill., 146. See also Chicago vs. Sheldon, 9 Wall., 55.

ARKANSAS.—"All property subject to taxation shall be taxed according to its value—that value to be ascertained in such manner as the general assembly shall direct, making the same equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than another species of equal value." In Pike vs. The State, 5 Ark., 205, it was held that "property of every character and description upon which a State tax may be levied must be taxed in proportion to its real and true value; and no portion of any distinct genus or species of property on which such tax is imposed can ever be exempt from it." The doctrine of the last clause was overruled in the State of Arkansas vs. County Court of Crittenden County, 19 Ark., 368. The court say: "We declare the true rule of construction to be that the legislature has the power under the constitution to select the objects of taxation, and upon the exercise of this power there is no constitutional restriction. When the legislature has selected the objects, then restrictions attach as to the imposition of taxes upon them, and the end intended to be accomplished is equality and uniformity in the taxation of all property taxed throughout the State, and not equality and uniformity throughout the State as to the whole of each or any particular species of property from which objects of taxation may have been selected. The restrictions relate to the valuation of the property taxed and to the rate of taxation imposed. They require all the property selected for taxation to be taxed according to its value, and that the rate of taxation shall not be higher upon the property of one tax-payer than upon that of another, no matter whether the property be of the same or different species." The court then allude to the fact that a number of named exemptions have existed under statutes ever since the adoption of the constitution. In the late constitution of Arkansas, in the constitution of California in force in 1868, and in the constitution of Ohio in force in 1856, the provisions upon the subject of taxation require, in terms, the taxation of all property, and the power of the legislature to exempt is denied. Fletcher vs. Oliver, sheriff, 25 Ark., 293; People vs. McCreery, 34 Cal., 435; Exchange Bank of Columbus vs. Hines, 3 Ohio, State 16.

LOUISIANA.—"Taxation shall be equal and uniform throughout the State. All property shall be taxed in proportion to its value, to be ascertained as directed by law. The general assembly shall have power to exempt from taxation property actually used for church, school, or charitable purposes," etc. In Mr. and Mrs. Lefranc vs. City of New Orleans, 27 La. An., 189, held that this excludes the power to exempt beyond the named exemptions. In City of New Orleans vs. Fourchy, 30 La. An., 913, an exemption from taxation of $500 worth of household furniture

and an exemption of $1,000 of income were sustained. It cannot be a matter of surprise that two members of the court dissented.

With these decisions before us there is little difficulty in giving the rule of exemptions as existing under our constitution. The legislature has full power here over the subject of taxation. It is directed to devise and adopt a system of revenue, and in doing so nothing is required of it except that regard shall be had to an equal and uniform mode of taxation to be general throughout the State. There is no provision directing all property to be taxed or limiting the power of the legislature in the matter of exemptions. As to the property made the subject of taxation, the requirement of uniformity prevents the adoption of different and irreconcilable methods as applicable to the same class or kind of property, and the requirement of equality prohibits taxing property of equal value at different rates. This we conceive to be the rule deduced from the constitution. We think the language quoted from the case of the State of Arkansas vs. County Court of Crittenden County, 19 Ark., 368, gives the rule in this State. We cannot better express what is there said and quoted in this opinion, and we adopt it.

We must confess that we cannot appreciate what may be called the classification exemption cases. As an elementary proposition, a house owned by a corporation is as much the subject of taxation as a house owned by an individual. It is the same kind and species of property, no matter who owns it, and we cannot see how the legislature, when the rule it is to prescribe is to be equal and uniform, can exempt it for the reason that it is used for one purpose or by one owner rather than another. If exempted it must result from the admitted power to exempt the property as property, not because of the character of ownership. It may be true that ownership and use may prompt the legislative action and may be made the method of identification of the subject-matter of the exemption; but the power is not controlled or modified by the nature of the subject upon which it acts or its ownership. Viewed as a question of power in the legislature, whether a saw or a hammer is in the hands of a merchant or a mechanic is immaterial; so also is it immaterial whether it is used to construct a church or a penitentiary.

It was the practice of the legislature to allow exemptions under the constitution of 1839, from the time of its adoption to the time when it ceased to be operative, and the power to make such exemptions has never been questioned. The rule we state is the general rule following a fair construction of the constitution. In this case, however, we are dealing with a species of property which had an especial standing and status under the constitution of 1839. The legality of the exemption allowed here is to be determined not alone by a reference to the clause of the constitution regulating the power of the legislature in the matter of taxation, but also in view of the provisions of section 1, article xi, of the constitution, which made it the duty of the State government not only to encourage the system of internal improvements to which this road belonged, but also to provide for a suitable application of such funds as may be appropriated for such improvements. Under these circumstances the roads belonging to this system constituted a distinct class of railroads, so far public in their nature as under the constitution to be the beneficial object of an appropriation of public funds. An exemption from taxation was a very proper method of encouragement. It was but an indirect method of ap-

70 propriating, for the benefit of this road, an amount of public moneys equal to the amount of its taxes, and this power no one can, with reason, deny.

As to the remaining question, as stated, we are not prepared to say with absolute certainty that the case of Wilson vs. Gaines, 103 U. S., 417, decided since the case of Gonzalez vs. Sullivan, 16 Fla., 791, does not control this case. While the cases are not precisely similar, yet, looking to the opinion rendered in that case (the case of Wilson vs. Gaines), and the manifest tendency of the court, we cannot affirm that the Supreme Court of the United States would not in this case hold that the exemption here was an immunity which, upon the acceptance of the provisions of the internal-improvement act by the Alabama and Florida Railroad Company, attached to it as a "personal privilege," and that it did not follow the road through the several transfers by which it became the property of the Louisville and Nashville Railroad Company. The law of the obligation of contracts as affected by State legislation is, under the Constitution of the United States, a matter of Federal rather than State jurisdiction, and it is our wish, as it is our duty, to do all we can consistently to give the people of this State the benefit of the action of that jurisdiction, which is the proper forum to settle this important question. Under the peculiar legislation of Congress calling into action the jurisdiction of the Supreme Court of the United States, the decision here must be in favor of the validity of the statute imposing this tax, in order to its review by the Supreme Court of the United States. It was insisted upon the hearing of this cause that, in view of the antecedent decision in the case of Gonzalez vs. Sullivan, the action of the circuit court was proper. We think the judge of the circuit court very properly left it to this tribunal to modify or change its own decision, but the case when it reaches us must be disposed of according to our judgment now. Contrary to our usual practice, but in conformity to our admitted power, the judgment of this court will dispose of the case without a remittitur.

The order of the circuit court awarding an injunction is reversed, the injunction is dissolved, and the bill is dismissed.

I, Charles H. Foster, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing pages, numbered from one (1) to inclusive, constitute a true copy of the opinion of said court, as filed in my office on the twenty-eighth day of July, A. D. one thousand eight hundred and eighty-two, in the case of Manuel Palmes, collector of revenue for Escambia County, in the State of Florida, appellant, and the Louisville and Nashville Railroad Company, appellees, as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court of Florida, at Tallahassee, this the second day of Oct., A. D. one thousand eight hundred and eighty-two.

[SEAL.] CHAS. H. FOSTER,
Clerk Supreme Court of Florida.

(Indorsement on cover:) No. 765. The Louisville & Nashville Railroad Company, plaintiff in error, vs. Manuel Palmes, collector of revenue for the State of Florida and for the county of Escambia in and for Escambia County. Florida sup. court. Filed 23rd October, 1882.

109-244

APPENDIX A*.

LAWS OF FLORIDA, CHAPTER 610 (1855).

AN ACT to provide for and encourage a liberal system of Internal Improvements in this State.

WHEREAS, The Constitution of this State declares "that a liberal system of Internal Improvements, being essential to the development of the resources of the country, shall be encouraged by the Government of this State, and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law, proper objects of improvements in relation to Roads, Canals and Navigable Streams, and to provide for a suitable application of such funds as may be appropriated for such improvements," therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened*, That so much of the Five Hundred Thousand Acres of Land granted to this State for Internal Improvement purposes, by an Act of Congress, passed the third day of March, A. D. 1845, as remains unsold, and the proceeds of the sales of such said lands heretofore sold as now remain on hand and unappropriated, and all proceeds that may hereafter accrue from the sales of said lands; also all the Swamp land or lands subject to overflow, granted to this State by an Act of Congress, approved September 28, A. D. 1850, together with all the proceeds that have accrued, or may hereafter accrue to the State from the sale of said lands, are hereby set apart and declared a distinct and separate fund, to be called the Internal Improvement Fund of the State of Florida, and are to be strictly applied according to the provisions of this Act.

SEC. 2. *Be it further enacted*, That for the purpose of assuring a proper application of said fund for the purposes herein declared, said lands and all the funds arising from the sale thereof, after paying the necessary expenses of selection, management and sale, are hereby irrevocably vested in five Trustees, to wit: in the Governor of this State, the Comptroller of Public Accounts, the State Treasurer, the Attorney General and the Register of State Lands, and their successors in office, to hold the same in trust for the uses and purposes hereinafter provided, with the power to sell and transfer said lands to the purchasers, and receive payment for the same, and invest the surplus moneys arising therefrom, from time to time, in Stocks of

the United States, Stocks of the several States, or the Internal Improvement Bonds issued under the provisions of this Act, and drawing not less than six per cent. annual interest; also, the surplus interest accruing from such investments, and to pay out of said fund agreeably to the provisions of this Act, the interest from time to time, as it may become due on the bonds to be issued by the different Railroad Companies under authority of this Act; also, to receive and demand, semi-annually, the sum of one-half of one per cent. (after each separate line of Railroad is completed) on the entire amount of the bonds issued by said Railroad Company, and invest the same in stocks of the United States or State Securities, or in the bonds herein provided to be issued by said Company. Said Trustees shall also invest the surplus interest of said sinking fund investments as it may accrue. Said Trustees shall also demand and receive from each Railroad Company named in this Act, the amount due to the Internal Improvement Fund from said Railroad Company, according to the provisions herein contained, on account of interest on the Bonds issued by said Company, and a refusal or neglect on the part of the President and Directors of any Railroad Company herein named to comply with the provisions of this Act, as to the payment to the said Trustees of the amount due and payable to the fund, as provided in sections eleven, twelve and thirteen, on account of interest and sinking fund, the individual property of each and all the Directors shall be liable in an action of debt to said Trustees for the amount due and unpaid, with 20 per cent. interest until paid.

SEC. 3. *Be it further enacted*, That all Bonds issued by any Rail Road Company under the provisions of this Act, shall be recorded in the Comptroller's office and so certified by the Comptroller, and shall be countersigned by the State Treasurer, and shall contain a Certificate on the part of the Trustees of the Internal Improvement Fund that said Bonds are issued agreeably to the provisions of this Act, and that the Internal Improvement Fund, for which they are Trustees, is pledged to pay the interest as it may become due on said Bonds. All Bonds issued by any Rail Road Company under the provisions of this Act, shall be a first lien or mortgage on the road bed, iron, equipment, work-shops, depots and franchise; and upon a failure on the part of any Rail Road Company accepting the provisions of this Act, to provide the interest as herein provided on the Bonds issued by said Company, and the sum of one per cent. per annum, as a sinking fund, as herein provided, it shall be the duty of the Trustees, after

the expiration of thirty days from said default or refusal, to take possession of said Rail Road and all its property of every kind, and advertise the same for sale at public auction to the highest bidder, either for cash or additional approved security, as they may think most advantageous for the interest of the Internal Improvement Fund and the bond holders. The proceeds arising from such sale shall be applied by said Trustees to the purchase and cancelling of the outstanding bonds issued by said defaulting Company, or incorporated with the sinking fund; *Provided*, That in making such sale, it shall be conditioned that the purchasers shall be bound to continue the payment of one-half of one per cent. semi-annually to the sinking fund, until all the outstanding bonds are discharged, under the penalty of an annulment of the contract of purchase, and the forfeiture of the purchase-money paid in.

SEC. 4. *Be it further enacted*, That a line of Rail Road from the St. Johns River, at Jacksonville, and the waters of Pensacola Bay, with an extension from suitable points on said line to St. Marks River, or Crooked River, at White Bluff on Apalachicola Bay, in Middle Florida, and to the waters of St. Andrews Bay, in West Florida, and a line from Amelia Island, on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension to Cedar Key, in East Florida; also a Canal from the waters of St. Johns River on Lake Harney to the waters of Indian River, are proper improvements to be aided from the Internal Improvement Fund, in manner as hereafter provided.

SEC. 5. *Be it further enacted*, That the several Rail Roads now organized or chartered by the Legislature, or that may hereafter be chartered, any portion of whose routes as authorized by their different charters, and amendments thereto, shall be within the line of routes laid down in section four (4), shall have the right and privilege of constructing that part of the line embraced by their charter on giving notice to the Trustees of the Internal Improvement Fund of their full acceptance of the provisions of this Act, specifying the part of the route they propose to construct; and upon the refusal or neglect of any Rail Road Company now organized to accept, within six months from the passage of this Act, the provisions of the same, any other Company, duly authorized by law, may undertake the construction of such part of the line as they may desire to make, and which may not be in progress of construction under a previous charter.

SEC. 6. *Be it further enacted*, That before any Rail Road Company shall be entitled to the provisions of this

Act, said Rail Road Company shall first grade, continuously, twenty miles, according to the following specifications—

First.—The line of Road for sixty feet from the centre shall be cleared of all the standing timber.

Second.—The grading shall be for a single track except at depots, turnouts and similar places, where it shall be wider if required by the State Engineer, with a road bed twenty feet wide in cuttings, with ditches from two to three and a half feet in depth below grade, with such widths as the State Engineer may direct, and eighteen feet wide on embankments, at the grade line, with slopes of one and a half feet base to one foot rise; and in all excavations and embankments, they shall be so constructed as to have a perfect drainage, and not permit any standing water to come within three feet of the lower side of the cross tie.

Third.—All the cross ties shall be delivered on the line of the Road and be of heart yellow pine, cyprus, white, yellow, post, live or spanish oak, white or red cedar, and not less than nine feet long, with not less than nine inches face, and eight inches in thickness, and shall be well and carefully bedded, and laid within two and a half feet from centre to centre.

Fourth.—At all water-ways, sufficient space shall be left for the unobstructed passage of water; and at all points on the line of the Road where side ditches can be cut that will carry off the surface water, they shall be constructed by the Company under the direction of the State Engineer.

Fifth.—In the crossing of all streams, the bridges shall be constructed according to plans approved by the State Engineer; and over all streams that are navigated, suitable draws shall be put in to admit the passage of boats or vessels usually navigating the same, to be decided by the State Engineer.

Sixth.—The gauge of the different Rail Roads shall be uniformly five feet, and connected continuously, so that cars, or trains of cars can pass on all the routes indicated, without changing freight. And it shall be the duty of the different Rail Road Companies to adopt a uniform tariff for transportation of passengers and for hauling the freight in the cars of another Company, upon usual and equitable terms, and no discrimination shall be made by one Company against the freight or passengers of another Company.

Seventh.—The iron rail used shall weigh not less than sixty pounds per lineal yard, and be of the best quality of

iron, and well fastened to the cross ties, with the best quality of spikes and plates.

Eighth.—The entire equipment shall be of the first class, and shall at all times be sufficient for the prompt transportation of all the passengers and freight ordinarily offering.

Ninth.—The grade on no portion of the route indicated by this Act, shall exceed forty-five feet per mile, and no single curve shall exceed three degrees of curvature, or be adopted unless approved of by the State Engineer.

SEC. 7. *Be it further enacted*, That after any railroad company shall have graded twenty miles of Road bed continuously, and furnished the cross ties agreeably to the specifications of this Act, and shall give notice to the State Engineer, it shall be his duty to examine personally said section of twenty miles, and if, after full examination, he shall approve the construction of said twenty miles, then it shall be his duty to certify the same to the Trustees of the Internal Improvement Fund; and on the completion of the grading and furnishing of the cross ties of each additional ten miles continuously, the State Engineer shall also examine the same, and, if constructed in accordance with the provisions of this Act, shall certify the same to the Trustees of the Internal Improvement Fund.

SEC. 8. *Be it further enacted*, That on the completion of the grading and the furnishing of the cross ties of twenty miles continuously, and every additional ten miles, as provided by this Act, said Rail Road Company are hereby authorized to issue Coupon Bonds, having not more than thirty-five years to run, and drawing not more than seven per cent. annual interest, payable semi-annually in the City of New York or Tallahasee, at the option of the purchaser, at the rate of eight thousand dollars per mile for the purchase and delivery of the iron rail, spikes, plates and chairs, and after the rail has been laid down on the line, the additional sum of two thousand dollars per mile, for the purchase of the necessary equipments: and said bonds shall always afterwards constitute and be a first lien or mortgage upon the road bed, iron, equipment, workshops, depots and franchise.

SEC. 9. *Be it further enacted*, That it shall be the duty of said Rail Road Company to deposit said Bonds with the Comptroller of Public Accounts, to be by him recorded, and the record certified on each Bond; and the State Treasurer shall enter, in a book to be kept for the purpose, the amount of each Bond with the rate of interest, the time it becomes due, and the place where the principal and

interest is payable, and shall countersign the same ; and it shall also be the duty of the Trustees of the Internal Improvement Fund, after having received a certificate from the State Engineer, that twenty miles, or ten miles, as the case may be, have been graded in all respects agreeably to the specifications of this Act, to sign said Bonds, agreeably to the Provisions of this Act, and to deliver them to the said Rail Road Company ; *Provided*, The President and at least four of the Directors file with the Trustees of the Internal Improvement Fund a statement under oath that the necessary quantity and quality of iron for said twenty or ten miles, as the case may be, has been purchased, and is within the jurisdiction of this State, and paid for, or to be paid for, with said Bonds or their proceeds ; *Provided, further*, That before said Trustees shall deliver to said Rail Road Company the said Bonds, said Company shall deposit with the Trustees of the Internal Improvement Fund, the first semi-annual installment of interest on the amount of Bonds certified to by said Trustees, to meet the same when due (or they shall retain the Coupons for the first semi-annual interest), and shall give to the Trustees of the Internal Improvement Fund a Bond with approved security, that said quantity and quality of iron shall be laid down on the line of their Road within six months after the said Bonds are issued.

SEC. 10. *Be it further enacted*, That any Rail Road Company receiving said certified Bonds, shall apply the same or their proceeds to no other purpose than purchasing the iron rail, spikes, plates or equipments ; and before any additional Bonds shall be certified by the Trustees of the Internal Improvement Fund, the iron rail shall be laid on that part of the route for which the Bonds were issued, and so on continuously until the line is completed.

SEC. 11. *Be it further enacted*, That it shall be the duty of the President and Directors of every Rail Road Company accepting the provisions of this Act, while the Road is under construction, to report to the Trustees of the Internal Improvement Fund every six months, under the oath of the President and at least two of the Directors, the gross receipts of said Company from the traffic of the Road for the past six months, the cost of transportation and repairs, and the total amount of the net receipts of said Company ; and it shall be the duty of the President and Directors to pay to the Trustees of the Internal Improvement Fund fifty per cent. of said net receipts every six months, which sum or sums shall be appplied by the trustees of the Internal Improvement Fund towards the payment of the interest of any Bonds issued by said Company.

SEC. 12. *Be it further enacted*, That every Rail Road Company accepting the provisions of this Act shall, after the completion of the road, pay to the Trustees of the Internal Improvement Fund at least one-half of one per cent. on the amount of indebtedness, or Bond account, every six months, as a sinking fund, to be invested by them in a class of securities named in section two, or to be applied to the purchase of the outstanding Bonds of the Company; but it shall be distinctly understood, that the purchase of said Bonds shall not relieve the Company from paying the interest on the same, they being held by the Trustees as an investment on account of the Sinking Fund.

SEC. 13. *Be it further enacted*, That if, on completion of any of the roads indicated in section four, the net earnings should be less than six per cent. on the capital stock paid in and bonded debt of said Company, first deducting the one per cent. per annum paid in to the sinking fund, it shall be divided *pro rata* between the Stock account paid in and bonded debt, and the Internal Improvement Fund shall pay the deficiency due on account of interest from time to time, as it may fall due. In the event the net earnings are over six per cent. on the capital stock paid in and bonded debt and sinking fund of one per cent., then the President and Directors shall first pay into the hands of the Trustees of the Internal Improvement Fund the amount due on the interest account of the bonded debt, in addition to the provision for the Sinking Fund every six months.

SEC. 14. *Be it further enacted*, That for all payments made by the Trustees of the Internal Improvement Fund on account of interest for any Rail Road Company agreeably to the provisions of this Act, said Trustees shall demand and receive from said Rail Road Company equal amounts of the Capital Stock of said Company, which Stock shall entitle the Internal Improvement Fund to all the privileges and advantages of private Stockholders.

SEC. 15. *Be it further enacted*, That on the routes indicated for the construction of the different lines of Rail Road, the State hereby grants to each of the different Companies that may hereafter construct portions of such line or route, the alternate sections of State Lands on each side for six miles, but the title to the same shall not vest in the Company except as the Road progresses, and not until thirty miles are completed, when the Company may sell one-half of the same within said thirty miles; and on the completion of thirty additional miles, then they may

sell the balance of their lands remaining unsold in the first thirty miles, and so on for each division of thirty miles until the Road is completed.

SEC. 16. *Be it further enacted*, That the Trustees of the Internal Improvement Fund shall hereafter fix the price of the Public Lands included in the Trust, having due regard to their location, value for agricultural purposes, or on account of timber or naval stores, and make such arrangements for the drainage of the swamp or overflowed lands as, in their judgment, may be most advantageous to the Internal Improvement Fund, and the settlement and cultivation of the land, and the said Trustees shall encourage actual settlement and cultivation of said lands by allowing pre-emptions under such rules and regulations as they may deem advisable; *Provided*, That in no case shall a pre-emption for more than one section of land be granted to any one settler.

SEC. 17. *Be it further enacted*, That as the Board of Internal Improvement recommend the construction of a navigable canal, connecting the waters of the St. Johns with those of Indian River, the State Engineer is hereby authorized to make a final location of the same as soon as practicable, and furnish detailed estimates and plans for the information of persons desirous of engaging in the work, and invite bids for its execution for one year—the bidders to specify the amount for which they will do the work, and the mode and manner in which payments are to be made, whether in lands or money, or in portions of each. And the Trustees of the Internal Improvement Fund are hereby authorized to pay out of said Fund, as the work progresses, the whole amount agreed upon by the terms of the contract; *Provided*, The entire cost shall not exceed Four Thousand Dollars in money and Four Thousand acres of land per mile; *Provided, further*, That the Trustees of the Internal Improvement shall be of the opinion that this sum in money can be applied to said purpose without impairing the efficiency of the Fund for Rail Road purposes.

SEC. 18. *Be it further enacted*, That the Capital Stock of any Rail Road Company accepting the provisions of this Act, shall be forever exempt from taxation, and the Roads, their fixtures and appurtenances, including workshops, warehouses, vehicles, and property of every description needed for the purpose of transportation of freight and passengers, or for the repair and maintenance of the Roads, shall be exempt from taxation while the Roads are under construction, and for the period of thirty-five years from their completion—and that all the officers of the

Companies, and servants, and persons in the actual employment of the Companies, be and are hereby exempt from performing ordinary patrol or militia duty, working on public roads and serving as jurors.

SEC. 19. *Be it further enacted*, That should any of the officers, or persons in the employ of any Rail Road Company in this State make any fraudulent statement of accounts, or make false issues or transfers of the Capital Stock or Bonds of any Rail Road Company, or shall fraudulently apply any money or property in his charge, belonging to said Company, or in charge of said Company, to his individual use or benefit, or to the benefit of any other person, it shall be considered a felony, and on conviction in any Court having jurisdiction of the same, shall be punished by fine at the discretion of the Court, and imprisonment of not less than two nor more than ten years.

SEC. 20. *Be it further enacted*, That after the routes indicated have been actually surveyed and adopted, and a plat thereof deposited in the office of the Secretary of State, it shall not be lawful for any other Rail Road to be built, cut, or constructed in any way or manner, or by any authority whatsoever, running laterally within twenty-five miles of the route so adopted, unless by said Company, or with the consent of the Trustees of the Internal Improvement Fund and a majority of the Stockholders, at an annual meeting, on a Stock vote.

SEC. 21. *Be it further enacted*, That should the Government of the United States grant land to the State of Florida for the purpose of aiding in the construction of the lines of Rail Road indicated, and their extensions, by general or special act, said lines of Rail Road shall be entitled to all the benefits and advantages arising from said grant that the State of Florida would be entitled to by the construction of said lines of Railway and their extensions; and the Governor of the State is hereby authorized and required, should such an act be passed by the Government of the United States, to direct said Rail Road Companies to select said land, and, after such selection, to give the Secretary of the Interior notice of such selection, and furnish him with a list of lands so selected, the number of each Section, fractional Section, or subdivision, and take such other action as may be necessary to fully secure the grant of lands to said Rail Road Companies, subject to all the conditions and restrictions of the Act of Congress making such grant.

SEC. 22. *Be it further enacted*, That it shall be lawful for the Board of County Commissioners of any County, or

the Mayor and Council of any City, or the Trustees of any Town, through or near which such Rail Roads or their extensions may pass, or in which they may terminate, and they are hereby authorized, to subscribe and hold stock in said Company, upon the same terms and conditions, and subject to the same restrictions as other Stockholders; *Provided*, It shall be first submitted to the vote of the legal voters of said County, City or Town, to be held and taken at such times and places, and in such a manner, as said authorities respectively may appoint, whether or not stock shall be subscribed and taken; and if, when the vote be thus taken, it shall appear that a majority of the votes shall be in favor of such subscription, it shall thereupon be lawful for the Board of County Commissioners, City or Town authorities, by agents by them appointed, to subscribe and take in such Company, such an amount of Stock as they shall determine; *Provided*, That in no case of County subscription the amount shall exceed fifty per cent. of the cost of construction through said County; and to issue the bonds of such County, City or Town, payable with interest at such times and places as they may deem proper, and dispose of the same for the payment of such subscription, pledging the faith and resources of such County, City or Town for the payment of such bonds and interest; and they shall, from time to time, levy and collect such a tax as shall be necessary to pay the installments of interest and the Bonds as the same become due, or to create a sinking fund for the gradual reduction of the same; *Provided*, That the rate of interest shall not exceed ten per centum per annum; or funds may be raised by such Board of County Commissioners, or City or Town Authorities, by tax, in such sums or installments as will meet such subscription, and the receipt for the payment of such tax shall entitle the payers thereof, for every one hundred dollars so paid, to have one share or more, as the case may be, of the stock so subscribed by said County Commissioners, City or Town, in said Company, and which receipts shall be assignable No stock held by any County, City or Town, shall be assignable by said County, City or Town, until the bonds issued for the purpose of procuring funds for the payment of said County, City or Town subscription shall be paid, except in exchange of such bonds.

SEC. 23. *Be it further enacted*, That in the event of the disagreement between any Rail Road Company accepting the provisions of this Act, and the Postmaster General, as to the compensation to be paid per mile by the Government of the United States to said Companies for trans-

porting the mail of the United States, on the routes indicated by this Act, the matter shall be settled by mutual agreement between the Postmaster General and the Governor of the State, and the refusal on the part of any Rail Road Company to perform the services required by the Post Office Department, for the compensation agreed on by the Governor and the Postmaster General, shall subject said Company to a fine of one hundred dollars for each and every day they refuse to perform the said award, which shall be recoverable by an action of debt, by the Postmaster General, but not if he be in arrears for more than one-quarter's compensation to such Company.

SEC. 24. *Be it further enacted*, That no Branch Roads from the main line of Rail Road, provided for by this Act, between the waters of Pensacola or Escambia Bay and the junction with the Florida Rail Road, shall be made to the Northern boundary line of this State, until that part of the line between the Suwannee River and the Florida Rail Road has been constructed; nor shall any such Branch Road be made to a point West of the Alapaha River without the consent of all the Companies owning the several portions of the main line, and without the approval of the Trustees of the Internal Improvement Fund.

SEC. 25. *Be it further enacted*, That the completed portion of any Rail Road authorized by this Act, shall carry the iron rails, spikes and plates or chairs required in the construction of any portion of the line indicated, at the uniform rate of two cents per ton per mile, and for such transportation shall receive in payment the Capital Stock of the Company for which the same was transported.

SEC. 26. *Be it further enacted*, That whenever any of the different Rail Road Companies shall purchase and deliver to the County Treasurer, or to the City or Town Authorities, the Bonds issued by any County, City or Town, to pay the subscription of the Capital Stock of said County, City or Town, or any portion of them, the Treasurer of said County, City or Town shall transfer an equal amount of the Capital Stock of said Company to said Rail Road Company, and it shall be the duty of the Treasurer of the County, City or Town Authorities to cancel and deface the Bonds exchanged.

SEC. 27. *Be it further enacted*, That after the Rail Road Companies indicated by the provisions of this Act, shall, for five consecutive years, pay six per cent. on the Capital stock paid in, and the interest on the Bonded Debt, and apply the sum of one per cent. yearly to a sinking fund on said debt, then the Trustees of the Internal Improvement Fund may apply, under the direction of the Legis-

lature, the annual income arising from said Fund to other purposes of Internal Improvement, or to the support of Schools, so long as the said Company shall continue to pay the same. But should any of said Rail Road Companies thereafter fail to provide the interest upon their bonded debt, and one per cent. annually as a sinking fund, then said fund shall pay the deficiency on the interest account, from time to time as it may arise.

SEC. 28. *Be it further enacted*, That the right of way through the State lands for two hundred feet in width, is hereby granted to the different Rail Road Companies on the routes indicated, with the right to cut timber, and procure the necessary earth and stone from the adjacent land, to construct and repair the same, and whenever it is necessary to construct turn-outs or side tracks, that this privilege may be extended to one hundred feet on each side of the Road, and of such side track.

SEC. 29. *Be it further enacted*, That the alternate sections of the Swamp and Overflowed Lands for six miles on each side may be granted by the General Assembly to such Rail Road Companies, to be hereafter chartered, as they may deem proper, on their compliance with the provisions of this Act, as to the manner of constructing the Road and drainage, and the sale and transfer of the alternate sections thus granted shall be in accordance with the provisions of this Act.

SEC. 30. *Be it further enacted*, That no Bonds shall be issued to the Companies under the provisions of this Act, in aid of any part of their Roads not completed at the end of eight years from the passage of this Act, and any Company failing to grade twenty miles of their Road within four years from filing notice of their acceptance of the terms of this Act, shall forfeit all right to its benefits.

SEC. 31. *Be it further enacted*, That in addition to the Bonds authorized to be issued in the preceding sections of this Act, there may be issued by the proper Rail Road Companies, Bonds to the amount of One Hundred Thousand Dollars for a Bridge crossing the Choctawhatchie River, and the like amount for a Bridge crossing the Apalachicola River, also One Hundred Thousand Dollars for the structures necessary to cross from the West side of Nassau River to Amelia Island, and Fifty Thousand Dollars for the crossing of the Suwannee River—which Bonds shall be guaranteed and provided for in the same manner as those hereinbefore authorized; *Provided*, That said Bonds shall not issue except in payment for work done, and then only as the work progresses, upon the Certificate

of the State Engineer that such work has been done, and that the amount of Bonds issued is required for the payment therefor.

SEC. 32. *Be it further enacted*, That if any person shall, while in charge of a Locomotive Engine, or acting as the Conductor or Superintendent of a Car or train of Cars, or on the Car or train as a Brakeman, or employed to attend the Switches, Drawbridges, or Signal Stations, on any Railway in this State, be intoxicated, he shall be deemed guilty of a misdemeanor, and upon conviction before any Magistrate, shall be punished by fine or imprisonment at the discretion of the Court.

[Passed the House of Representatives, December 29, 1854. Passed the Senate, January 2, 1855. Approved by the Governor, January 6, 1855.]

APPENDIX A. * *

2 U. S. STATS. AT LARGE, 15–16.

AN ACT granting public lands in alternate sections to the States of Florida and Alabama to aid in the construction of certain railroads in said States.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress Assembled, That there be, and is hereby granted, to the State of Florida, for the purpose of aiding in the construction of a railroad from St. John's River, at Jacksonville, to the waters of Escambia Bay, at or near Pensacola, and from Amelia Island, on the Atlantic, to the waters of Tampa Bay, with a branch to Cedar Keys, on the Gulf of Mexico; and also, a railroad from Pensacola to the State line of Alabama, in the direction of Montgomery, every alternate section of land designated by odd numbers for six sections in width on each side of said roads and branch, but in case it shall appear that the United States have, when the lines or routes of said roads and branch are definitely fixed, sold any section or any part thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of the said State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections, as shall be equal to such lands as the United States has sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid, which lands (thus selected in lieu of those sold and to which pre-emption right has so attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid,) shall be held by the State of Florida in trust for the use and purpose aforesaid; *Provided*, That the land to be so located shall in no case be further than 15 miles from the lines of said roads and branch, and selected for and on account of each of said roads and branch; *Provided further*, That the lands hereby granted for and on account of said roads and branch, severally, shall be applied exclusively in the construction of that road or branch for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other pur-

pose whatsoever; *And Provided further*, That any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operation of the act, except so far as it may be found necessary to locate the routes of said Rail Roads or branch, through such reserved lands, in which case the right of way only shall be granted subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States within six miles on each side of said roads and branch, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said State, shall be subject to the disposal of the Legislature thereof for the purposes aforesaid, and no other, and the said rail roads and branch shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State, shall be disposed of by said State only in the manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads and branch, and included within a continuous length of twenty miles of each of said roads and branch, may be sold, and when the Governor of said State shall certify to the Secretary of the Interior that any continuous twenty miles of any or either of said roads or branch is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads or branch, having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of said roads or branch, may be sold, and so, from time to time, until said roads or branch are completed, and if any or either of said roads, or branch are completed, and if any or either of said roads, or branch, is not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

[Approved May 17, 1856]

109-244

SUPREME COURT U.S.
FILED
OCT 20 1883
JAMES H. BAKEWELL, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 765.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

Plaintiff in Error,

vs.

MANUEL PALMES, COLLECTOR OF REVENUE FOR THE STATE OF FLORIDA, AND FOR THE COUNTY OF ESCAMBIA, IN AND FOR ESCAMBIA COUNTY.

In Error to the Supreme Court of the State of Florida.

JOHN L. CADWALADER,
For Appellant.

Evening Post Job Printing Office, N. Y.

INDEX.

PAGE

STATEMENT OF FACTS 1

ARGUMENT 11

APPENDIX A—(*Internal Improvement Act*, 1855) 29

APPENDIX B—(*Act of Dec.* 14, 1855) 30

APPENDIX C—(*Charter Ala. & Fla. R. R. Co.*) 31

APPENDIX D—(*Amended Charter P. & L. R. R. Co.*) 33

APPENDIX E—(*Charter Pensacola R. R. Co.*) 36

APPENDIX F—(*Amendment to Charter L. & N. R. R. Co.*) 38

APPENDIX G—(*Original Bill, Gonzalez* v. *Sullivan*) 39

APPENDIX H—(*Opinion of the Court, Gonzalez* v. *Sullivan*, 16 *Fla.*, 791) 42

APPENDIX I—(*Denial of Rehearing, Gonzalez* v. *Sullivan*) 54

Supreme Court of the United States.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
Plaintiff in Error,

vs.

MANUEL PALMES, COLLECTOR of Revenue for the State of Florida, and for the County of Escambia, in and for Escambia County,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

Statement of Facts and Brief on behalf of the Plaintiff in Error.

Statement of Facts.

This writ of error involves the question whether the line of railroad commenced, partly completed and operated by the Alabama and Florida Railroad Company, and which, through mesne transfers has finally

come into the hands of the Louisville and Nashville Railroad Company, is exempt from taxation by virtue of the Acts of the Legislature of the State of Florida, and particularly under what is known as the Act to provide for and encourage a liberal system of Internal Improvements in that State, being chapter 610, laws, 1855. The cause was advanced on motion of the Attorney-General of the State of Florida, who, in his petitition filed in this court, in March, 1883, stated that some 480 miles of railroad, owned by five distinct corporations, claimed immunity from taxation upon practically the same ground as is assumed in this case. A proper decision or understanding of the case, however, calls for a careful examination into the particular facts surrounding this case alone, for which reason, the plaintiff in error respectfully invites the attention of the court to the following statement of facts in chronological order.

The constitution of the State of Florida, in force in 1855, contained, among other things, the following provision: "That a liberal system of Internal Improve-
" ments, being essential to the development of the
" resources of the country, shall be encouraged by the
" Government of this State, and it shall be the duty of
" the General Assembly as soon as practicable to ascer-
" tain by law, proper objects of improvement in relation
" to Roads, Canals and Navigable Streams, and to provide
" for the suitable application of such funds as shall be ap-
" propriated for such improvements."

The Legislature of Florida thereupon passed an act, approved January 6, 1855, entitled "An Act to provide for and encourage a liberal system of Internal Improvements in this State" *Laws, cap.* 610 [Appendix A.]. By this Act, the Legislature provided for a general system of internal improvements for the State of Florida, offering as inducements to capitalists certain benefits and privileges, in order to encourage the construction of the particular lines of road therein set forth. Section 18 exempted forever from taxation the capital stock of any railroad company accepting the provisions of this act, and provided further that "*The Roads*, their fixtures and appur-
" tenances, including the workshops, warehouses, vehi-

" cles and property of every description needed for the " purposes of transportation of freight and passengers, or " for the repair and maintenance of the roads, shall be " exempt from taxation while the *Roads* are under con- " struction, and for a period of thirty-five years from their " completion." Without referring at this time to the legal interpretation of this clause, it will be enough to say that one question here is, whether the exemption thus granted is annexed to the property in the hands of any subsequent holder until the expiration of the specified period.

By a further act of the Legislature of the State of Florida, approved December 14, 1855, *Laws, cap.* 734 [Appendix B.], it was provided (§ 4) that "*A line of* " *railroad* to be constructed from Pensacola, or any other " point or points on the waters of Pensacola Bay, or the " waters of St. Andrew's Bay, to the north line of the " State, leading in the direction of Montgomery, Ala- " bama, shall be considered as a proper improvement to " be aided from the Internal Improvement Fund," within the meaning of the act above referred to of January 6, 1855.

It is admitted that the line of road now owned and operated by the plaintiff comes within the above description, and in *Gonzalez* v. *Sullivan*, the Supreme Court of Florida decided that this line of road was, on a proper interpretation of the two Acts of January 6, 1855, and December 14, 1855, brought within the provisions of § 18 of the Internal Improvement Act of January 6, 1855.

The Alabama and Florida Railroad Company, the original corporation constructing the line, was chartered by act of the Legislature of Florida, approved January 8, 1853, *Laws, cap.* 483 [Appendix C.], and began the construction of its road, giving due notice of its acceptance of the terms of the Improvement Act.

After the completion of a portion of its line, the road, with its real estate, personal property, and all rights, privileges, franchises and immunities, was sold under a decree of forelosure rendered May 31, 1872, and was bought July 9, 1873, by another corporation, known as The Pensacola and Louisville Railroad Company,

chartered by act of the Legislature of Florida January 16, 1868. By section 18 of the Act of February 4, 1872, rechartering this company, it was enacted *Laws, cap.* 1915, [Appendix D] "that the Pensacola and Louisville "Railroad Company having become the assignee of "the Alabama and Florida Railroad Company, and the "franchises of the said corporation, and being in posses- "sion of and operating the said line of road, which cor- "poration was exempt from taxation for a limited period, "the said Pensacola and Louisville Railroad Company, "its property now owned or hereafter to be acquired, shall "also be exempted from taxation during the remainder of "the said period" (*i.e.*, for the remainder of the 35 years, and until 1895.)

The railroad, privileges, franchises and immunities of the Pensacola and Louisville Railroad were transferred May 27, 1878, to the Pensacola Railroad, chartered February 27, 1877. *Laws, cap.* 3069, [Appendix E]. The Act chartering this company was entitled "An act "to incorporate the Pensacola Railroad, and to authorize "it to become the purchaser and assignee of the property, "rights, franchises, privileges and immunities of the "Pensacola and Louisville Railroad Company."

Among those "privileges and immunities" was exemption from taxation, as above shown.

Further, by § 2 of its charter, the Pensacola Railroad Company was expressly authorized and empowered "to "acquire by purchase and assignment all the property, "rights, franchises, privileges and *immunities* of the "Pensacola and Louisville Railroad Company, a corpora- "tion incorporated, &c., * * * whether the same were "acquired under the laws of the States of Florida or "Alabama or the laws of the United States, or as the "assignee and successor of the Alabama and Florida "Railroad Company, and upon completion of the said "purchase and assignment the said Pensacola Railroad "Company shall be deemed in law and equity to be "fully invested with and entitled to all the said prop- "erty, rights, franchises, privileges and immunities of the "said Pensacola and Louisville Railroad Company as

" though the same were originally granted to or acquired " by the said Pensacola Railroad Company."

Section 13 of the Act of 1872, amending the charter of the Pensacola and Louisville Railroad Company [Appendix D], provided (*inter alia*), "And it shall be law- " ful for said company to purchase, lease, acquire an " interest in, to unite or consolidate with, *lease or sell to* " *any other railroad company in or out of the State*, and " to make the same one company with a consolidated " stock and property, and with one Board of Directors. " *Provided* that after such * * * * *lease or sale* there " shall not be any cessation in the operation of the road, " nor discrimination * * * * against the interests of the " people of Florida. *And upon such* * * * * *sale* or con- " solidation, the companies that are parties thereto may " adopt a corporate name, and shall have all the powers " and privileges conferred upon the Pensacola and Louis- " ville Railroad Company."

Taking this in connection with the terms above set forth [Appendix E] of § 2 of the charter of the Pensacola Company, it is clear that the latter company was given a right to sell its property, franchises, privileges and immunities to the plaintiff company, the Louisville and Nashville Railroad Company, and that that company thereupon became duly invested with the same.

The Louisville and Nashville Railroad Company is a coration incorporated under the laws of the State of Kentucky, and by act of the Legislature of that State, approved March 6, 1878 [Appendix F], it is empowered to purchase any railroad in any other State.

In December, 1880, it purchased the road of the Pensacola Railroad Company, with all its property, together with all its franchises, rights, privileges, easements and immunities, which, as shown above, the Pensacola Road had a right to sell; and it has ever since operated the line of road in question.

In 1877 a first attempt was made by the officials of the State of Florida to tax the property of this line of road, then in the hands of the Pensacola and Louisville Rail-

road Company. The collector of Escambia County advertised for sale on the 6th of August, 1877, the track of the railroad in that county, together with the locomotives, passenger and freight cars and machine shops, to satisfy a tax amounting to $4,826.84 theretofore levied on the property. Thereupon Daniel F. Sullivan filed his bill in the First Judicial Circuit of the State of Florida for Escambia County in chancery, against Samuel Z. Gonzalez, State and County Collector of Revenue, setting forth the general facts much in form as in the bill now before the court [Appendix G], and in which he alleged that he was the owner of the equity of redemption of the Pensacola and Louisville Railroad and all the other property of the company levied on, he having purchased the property and all of it under sales made subject to the existing mortgages, and that he was the owner of 532 of the 600 bonds existing on the road, the mortgage to secure which covered all the property so levied upon.

On the filing of this bill, an injunction was obtained in the Circuit Court of Florida, and the case was taken by appeal to the Supreme Court of the State, and argued at great length. The decision in that case is reported *Gonzalez* v. *Sullivan*, 16 *Fla.*, 791, and is herewith annexed at length [Appendix H].

The court there decided that the Act of January 6, 1855, designating certain improvements as proper objects to be aided by the State, established a system; and that the acceptance of the provisions of the Act by the companies constructing this line, constituted a contract between the corporation, by whatever name called, and the State. In the language of the court: "Under theAct of December " 14, 1855, this *line of road* became a part of the system. " It became a road within the language of the 18th sec- " tion. That fact existing, upon the acceptance of the " provisions of the act by the company having the right " to construct the road, the right of exemption during " construction and thereafter for 35 years, enured as a " right resting in contract, and as attached to the *road* " *as a road, and not simply because it was the property of* " *one corporation or another.*"

A petition having been filed for a rehearing, the motion

was denied at the June Term, in 1878, and in a further opinion the court reiterated the positions already assumed and denied the rehearing [Appendix I].

A somewhat similar question as to taxation had been raised in 1876 in *A. and G. R. R. Co.* v. *Allen*, 15 *Fla.*, 637, and decided in favor of the exemption, but this decision, in the fullest, broadest and most conclusive manner, settled the law of the State of Florida on this subject, and definitely disposed of the question of the taxation of this, or any road similarly situated in the State of Florida, until four years later this attempt was made to tax the Louisville and Nashville Railroad, which had since succeeded to the same property. Similar attempts were made at the same time to tax the property of other roads similarly situated.

Early in the year 1882, Manuel Palmes, collector of revenue for Escambia County, the same county in which the case of *Gonzalez* v. *Sullivan* arose, levied upon certain locomotives and box-cars for county taxes alleged to be due on the road and property for the years 1879, 1880, and 1881. The decision of the Supreme Court of Florida in the *Gonzalez* case was rendered in 1878. The property was expressly exempted by statute in the hands of the Pensacola Railroad Company, which only transferred it in 1880, and still a levy for taxes was made against the new corporation for 1879—prior to the transfer. The collector advertised the same for sale ; whereupon the Louisville and Nashville Railroad, in March, 1882, filed a bill in the Florida State Circuit Court, drawn in form like the bill in the *Gonzalez* case, praying an injunction to restrain the sale of the property in question.

This bill (Record, page 1), alleges that a levy had been made for county taxes, claimed to be due for the years 1879, 1880, and 1881, upon the track of the road from Pensacola to the State Line, and upon the rolling stock used in operating the road ; that the road is the same road operated by the Alabama and Florida Railroad Company, and sets out the several transfers of the property in question, as herein above referred to ; and in every case, the allegation and proof show that the franchises, privileges, easements *and immunities* were vested in each corporation

in succession, and finally in the plaintiff in error (Record, page 2, fo. 4).

The bill contains allegations sufficient to bring the line of road within the Act of January 6, 1855, providing for a system of internal improvements, a fact which is in reality unquestioned, and ends with allegations that no assessment had been made for taxes for the years 1879 and 1880; that there was no right to levy therefor; that the collector was without property to respond in damages, and all other requisite allegations to sustain the injunction prayed for.

The defendant in his answer (Record, page 12), practically admits the allegations in complainant's bill, wherein it is alleged that on each of the several transfers not only the road and the property, but also the *privileges, easements and immunities* passed to the new company,—as to these allegations claiming the benefit of a demurrer. The answer further sets up that even if the property of the Alabama and Florida Railroad was exempted by statute, that the exemption was unconstitutional, and that, therefore, the people of Florida were not precluded from taxing the property so claimed to be exempt; further, that the property claimed to be exempt is not absolutely identical with that of the Alabama and Florida Railroad, the company originally exempted, but that although a portion of the road-bed is the same, the general property is not the same; and finally, the answer traverses the particular allegations upon which the plaintiff relied for obtaining an injunction.

An injunction was granted (Record, page 15), the plaintiff giving a bond in $15,000, conditioned to pay the taxes, unless plaintiff were adjudged exempt from taxation. An appeal was taken from the interlocutory decree granting the injunction, and the case was taken to the Supreme Court of Florida, by a petition of appeal (Record, page 20), and the whole question again argued.

On the 28th of July, 1882, judgment was rendered by the Supreme Court of the State of Florida, reversing the order of the Circuit Court which had granted the injunction, dissolving the injunction and dismissing the bill. The opinion (Record, pp. 26–33) was delivered by the same judge

who, in 1878, delivered the opinion in *Gonzalez* v. *Sullivan*, where precisely the same points were involved. The court frankly and distinctly admits that the question in this case is the same as the one involved in the decision of *Gonzalez* v. *Sullivan*, viz., whether the line of railroad extending from Pensacola Bay to the northerly line of the State of Florida, in the direction of Montgomery, Alabama, with its property, fixtures and appurtenances, is exempt from taxation for the remainder of the period of thirty-five years from its completion, (*i. e.*, until 1895), which, in the prior case, was held to be so exempt. The court adds that the question is presented under circumstances somewhat different, in that it is claimed (1), that the 18th section of the Internal Improvement Act, granting the immunity from taxation, is unconstitutional, being in conflict with the limitations as to taxation imposed by the Constitution of the State, and (2), that since the decision in the case of *Gonzalez* v. *Sullivan*, the Supreme Court of the United States has expressed certain views which *may*, perhaps, be in conflict with the decision in that case.

The question of constitutionality was discussed at great length by the court, and it was distinctly held that the Act was constitutional, thus leaving no ground for an appeal to this court on that subject, or for its consideration in this court, the decision being purely as to the construction of a State statute involving no conflict with the Constitution or statutes of the United States.

As to the question of exemption from taxation (Record, page 33), the court, while adhering to its former opinion and judgment as expressed in the *Gonzalez* case, viz., that the immunity from taxation attached to the property, as property, no matter in whose hands, and not to the Alabama and Florida Railroad Company or to any other corporation, as a personal privilege, nevertheless says that it reverses the decree, because it cannot affirm that the Supreme Court of the United States would not hold that the exemption originally granted was a personal privilege which would not follow the property. Therefore, for the purpose of permitting an appeal to the Supreme Court of the United States, the court affirmed

the validity of the statute of 1881, imposing the tax, and reversed the decree below, solely to allow the case to come before this court. In other words, the Supreme Court of Florida still entertains, refers to, and tacitly affirms the correctness and propriety of its former decision exempting the property of this railroad as property appurtenant to the line of road, irrespective of the ownership thereof, but it yielded to the pressure brought upon it within the State to give a decision which would permit the question in litigation to come before this court, being willing, perhaps, that this court should assume the responsibility, if it is prepared to do so, of imposing a tax upon the propery in question, although such decision will be in conflict with the settled law followed for five years past in Florida, and will be disastrous to the present owners of railroads in that State, who have invested their property in railroads there, relying on exemption from taxation, as declared by the *Gonzalez* case.

ASSIGNMENTS OF ERROR.

That the Supreme Court erred—

1. In upholding the validity of the State statute imposing the tax.

2. In declaring the same constitutional.

3. In refusing and failing to adjudge, both on the pleadings and by the proceedings, that the exemption from taxation passed to plaintiffs in error.

4. In reversing the judgment of the circuit court, in vacating the injunction, and dismissing the bill.

ARGUMENT.

Point I.

The decision of this case in the State Circuit Court, and the opinion by the Supreme Court, show beyond controversy that all the facts alleged in the bill, and required to be proved to obtain an injunction originally, were admitted, or treated as proved.

The case was originally heard on bill and answer (Record, p. 15), and the court will be presumed to have found the necessary allegations of fact to support the injunction. On appeal, the opinion of the court clearly shows that all the facts were admitted, and leaves no question of fact open.

Point II.

We insist that in the case before the court, immunity from taxation clearly exists by admission and under legislative sanction, rendering unnecessary any discussion of the effect or scope of the Act of 1855.

1. The bill alleges, and the answer admits that not only the road with its appurtenant property passed on each mesne transfer to the succeeding corporation, but that in addition the *privileges, franchises, easements, and immunities* (Record, p. 1 and 2), and the distinct allegation is made that "the afore-mentioned railroad, with all its "property connected therewith, and all its franchises, priv-"ileges, easement, and immunities were afterwards sold to "your orator * * * and is now owned and controlled "by your orator."

Reference is made to the transfer (Record, pp. 9–11), on

examination of which it appears that the deed from the Pensacola road, executed in pursuance of a resolution adopted by the stockholders thereof, sold and conveyed to the plaintiff its railroad, right of way, and property, "together with all the franchises (except the franchise to "be and exist as a corporation), rights, privileges, ease- "ments and immunities of said Pensacola Railroad Com- "pany, or incident to its railway, whether derived or "acquired from the States of Florida or Alabama."

It will not be seriously doubted that the Pensacola Railroad Company with its property was exempt from taxation. Not only had it the exemption given by the Improvement Act of 1855, but it had a special exemption creating a contract in its own charter [Appendix E], whereby it was expressly authorized to acquire all the property, rights, franchises, privileges and immunities of the Pensacola and Louisville Railroad, whether acquired under the laws of Florida, Alabama, or the United States, or as the assignee of the Alabama and Florida Railroad, upon completion of which purchase and assignment the Pensacola Company was declared invested with and entitled to all the property, rights, franchises and immunities of the Pensacola and Louisville Railroad Company, as if the same were orig inally granted to the Pensacola Railroad Company. Now, by § 18 of its charter [Appendix D], the Pensacola and Louisville Railroad and its property were expressly exempted from taxation.

The Act incorporating the Pensacola Railroad Company was, moreover, entitled An Act to authorize the company to become the purchaser and assignee of all the rights, franchises, privileges, and immunities of the Pensacola and Louisville Company.

It cannot be doubted that this is not only a recognition and assent by the State of Florida to the exemption of the new corporation, but a contract (see cases hereafter referred to) between the State and the new corporation attaching to the property. The State contracting with the Pensacola Railroad that if it would buy the old road and carry on the enterprise, it should be exempt from tax-

ation; and the State would be estopped from denying the right of the new company to exemption.

Humphrey v. Pegues, 16 *Wall.*, 244, approved 97 *U. S.*, *at* 711 ; 102 *U. S.*, *at* 277, and followed in numerous cases.

The bill, therefore, alleges as a fact, and the exhibits show, that the same property, "*with all its franchises, rights, privileges, easements and immunities*," was sold and conveyed to the plaintiff in error.

To this allegation in the bill, the answer demurs—admitting the facts and denying the conclusion of law, (Record p. 12, fol. 32).

It is submitted, therefore, on this record, that whether the immunities passed, which was the question in litigation, is concluded by the pleadings.

At a first glance, the answer at fol. 34 and 35 may seem to deny the admission so made, but such is not the case, as fol. 34 simply alleges that the particular property on which the taxes are assessed did not exist *in its entirety* in the hands of the Alabama and Florida Railroad, and fol. 35, answering a particular clause in the bill, alleging a conclusion of law, denies the conclusion in the ninth paragraph, and not the allegations in the earlier paragraphs, which are met only by a demurrer.

In *Wilson* v. *Gaines*, 103 *U. S.*, at 421, the court held that although the bill alleged that the immunities passed to the new corporation, to which a demurrer was interposed, admitting the fact, still, the record showed that the lien of the State was put only on the property, not on the franchises or immunities, and that therefore they *could not* pass. Here we supply that link, and show they were sold, and did pass.

2. Further, we submit that the property being clearly exempt in the hands of the Pensacola Railroad Company, as above shown, is also exempt *by statute* in the hands of the present holders, the Louisville and Nashville Rail-

road Company, and that the State of Florida consented to the transfer of the exemption it it.

The Pensacola Railroad Company was invested by § 2 of its charter [Appendix E] with all the property, rights, franchises, privileges and immunities of the Pensacola and Louisville Railroad, as if the same had been originally granted to the Pensacola Railroad.

Among these rights, franchises, and privileges was the right to lease or to sell to any other company in or out of the State, which new company on such sale was vested with "all the powers and privileges conferred upon the Pensacola and Louisville Company." [Appendix D, § 13.]

There was no restriction as to what the corporation might sell, but bearing in mind that the purpose always in view was to secure the completion and operation of the road within the State and beyond the State line, the intention was that the road, with all its property, rights and immunities, in other words, that "*the thing*" in the condition it then was, with all its belongings, including the exemption from taxation might be transferred or leased, or in fact, any arrangement made to carry out the general purpose.

The Pensacola Railroad was invested, as we have seen, with all these rights, franchises, privileges and immunities, as if they had been specifically enumerated in its charter, thus acquiring a right to sell to any corporation within or beyond the State.

Having this right to sell, and it appearing that the Louisville and Nashville Railroad Company would do what had been desired so long, viz., operate the line as a through road, the Pensacola Railroad, in pursuance of this power, sold its road, its property, franchises, rights, and immunities, including the immunity from taxation, to the Louisville and Nashville Railroad Company, specifically setting out in the transfer the *immunities*, with the other rights and property.

We submit, therefore, and with confidence, that entirely apart from the Act of 1855, under which the property *as property* was exempted, this property was particularly exempted by special statutes, whereby the Legislature of Florida expressly authorized the transfer of the exemp-

tion, holding out to a new purchaser exemption from taxation as one of the benefits accruing, in order to induce a purchase and secure the operation of the road.

The language of the court in *Wilson* vs. *Gaines*, 103 *U. S.*, at 421–422, and the distinction drawn between that case and *The Knoxville and Ohio R. R.* vs. *Hicks*, now reported 9 *Baxter*, 442, clearly support this view, which is borne out by

Humphrey v. *Pegues*, 16 *Wall.*, 244.
Railroad Cos. v. *Gaines*, 97 *U. S.*, *at* 711–2.
Railroad Co. v. *County of Hamblen*, 102 *U. S.*, *at* 277.

If this position be correct, and the plaintiff in error confidently urges that careful examination will support it, a discussion of the main questions appearing in the opinion of the Supreme Court of Florida will not be necessary.

Point III.

The decision in the case of *Gonzalez* v. *Sullivan* established an adjudication on the question of the right of the State of Florida to tax the road-bed and property then in the hands of the Pensacola and Louisville Railroad Company, as the successors of the Alabama and Florida Railroad Company, as between the Pensacola and Louisville Railroad Company and the State of Florida or the Tax Collector for the time being of Escambia County. That decision enures by way of estoppel in favor of the other companies succeeding to the property, as privies in estate with Sullivan, the nominal defendant in error, in that case.

The position and rights of Sullivan are shown in the bill filed by him [Appendix G], and the opinion in the case [Appendix H.] He intervened to protect *the property*, not to protect any personal right of his own, and his suit pray-

ing an injunction was really the suit of the Pensacola and Louisville Railroad Company; it was the property of that company that was seized, and Sullivan prayed and obtained an injunction, protecting it from seizure and sale for taxes.

Sullivan was one of the incorporators [Appendix E, § 1] and President (Record, p. 11) of the Pensacola Company, to which the Pensacola and Louisville Company sold, and through which the plaintiff in error claims.

It is true that the bill in the present case was not filed upon the ground that the question was *res adjudicata* as between the Louisville and Nashville Railroad Company the State, but nevertheless the record in the former suit was practically before the court, and was considered, as appears clearly by the opinion: that is sufficient.

Bigelow: Estoppel. lxiii; 45; 94–5; 284.
Cooley: Constl. Lim's (5 ed.) 59–60.
Freeman: Judgments, § 165.
Taylor: Evidence, § 1689.
Blakemore's Case, 2 *Den., Cr. C.*, 410.
Smith vs. *Kernochen*, 7 *How.*, 198.
Preble vs. *Bd. of Supervisors*, 8 *Bissel*, 358.
Finney vs. *Boyd*, 26 *Wis.*, 366.
State vs. *C. & L. R. R. Co.*, 13 *S. Car*, 290.

Indeed, such an estoppel by judgment may fairly be said to make part of the title to the property concerned.

Bro. Abr. Tit. Estoppels, pl. 15.
Adams vs. *Barnes*, 17 *Mass.*, 365.
Kelley vs. *Donlin*, 70 *Ill., at* 386.
State vs. *C. & L. R. R. Co.*, 13 *S. Car., at* 313–4.

Point IV.

The plaintiff in error submits that the Record shows that this property was purchased by the Louisville and Nash-

ville Railroad Company, while the decisions in *A. & G. R. R. Co.* vs. *Allen,* and particularly in *Gonzalez* vs. *Sullivan,* which had special reference to this property, were unquestioned law, declaring the property exempt until 1895, after a full consideration of the legislation above referred to ; and that, therefore, the State of Florida is now estopped from denying that exemption either in her courts, or in her Legislature.

The exemption may fairly be said not only to have been an inducement to the purchase, but to make a part of the title to the property.

The case of the plaintiff in error is similar to that of bondholders, who have purchased bonds, relying on a decision of the Supreme Court of the State, adjudicating the validity of the bonds.

The State will not be permitted afterwards to reverse that decision, and declare the bonds invalid. So this court has always held, whenever the question has arisen, from *Gelpcke* vs. *Dubuque,* 1 *Wall.,* 175, to *Louisiana* vs. *Pilsbury,* 105 *U. S. at* 295.

See 3 *Wall.,* 294 ; 4 *Wall. at* 274 ; 9 *Wall. at* 485 ; 16 *Wall. at* 690 ; 94 *U. S. at* 642.

Point V.

The court below erred in vacating the injunction and dismissing the bill.

This brings us to an examination of the issues in the case as discussed in the court below (Record, pp. 26-33), which were :

1. Whether § 18 of the Internal Improvement Act, granting immunity from taxation, was in conflict with the Constitution of the State.

2. That this court, by its expression in late cases *may* differ in opinion with the Supreme Court of Florida on the construction which ought to be given to § 18, upon the point whether the exemption attaches to the property irrespective of ownership, or whether it is a personal privilege.

1. As to the *Constitutionality* of the Act of 1855, originally granting the exemption, no question on that head can be raised in this court.

The court below, after careful examination, declared the Act constitutional (Opinion, Record, pp. 26 to 33), following the previous decision in *Gonzalez* v. *Sullivan*.

The writ of error was allowed on the sole ground that the State statute of 1881, assumed to tax property which was exempt by legislative enactment and contract (Record, p. 25, fols. 63–4).

Under the settled rule of this court, the decision on the constitutional point having been purely as to the construction of the State Constitution and statutes, is not open to review in this court.

See authorities collected in *Burgess* v. *Seligman*, Jan'y Term, 1883.

Even if the question of the power of a State to grant the exemption were open to discussion in this case, that question has long since been definitely settled here.

New Jersey vs. *Wilson* 7 *Cranch.*, 164.
Jefferson Bank vs. *Skelley*, 1 *Black.*, 436.
Home for the Friendless vs. *Rouse*, 8 *Wall.*, *at* 438.
Wilmington R. R. Co. vs. *Reid*, 13 *Wall.*, 265.
Raleigh, &c., R. R. Co. vs. *Reid*, 13 *Wall.*, 269.
Humphrey vs. *Pegues*, 16 *Wall.*, *at* 249.

In *Humphrey* vs. *Pegues*, Mr. Justice Hunt, delivering the opinion of the court, uses the following language at p. 249 :

"Another question is raised, to wit : That a legislature

"does not possess the power to grant to a corporation a "perpetual immunity from taxation. * * * * It is "too late to raise this question in this court. It has been "held, &c., &c. * * It must be considered as definitely "settled in this court."

That a *pro forma* decision was rendered in the same case in favor of tho validity of the tax does not impair the authority of the decision on the point of the constitutionality of § 18 of the Improvement Act.

R. R. Co. v. *Schutte*, 103 *U. S. at* 143.

2. As to the *construction* of § 18 of the Internal Improvement Act of 1855—

a. The plaintiff in error submits that the question is purely one of the construction of a State statute, viz.: whether section 18 of the Internal Improvement Act is to be construed as exempting the road and property *as property* regardless of the ownership of it, or whether the exemption was a personal privilege attached to a corporation, *eo nomine*, and lost on a transfer of its property, rights, franchises and immunities. On this subject, the Supreme Court of Florida in—

Gonzalez vs. *Sullivan*, 16 *Fla.*, 791;

once for all, after full argument and consideration, reached a conclusion, and construed the act.

The court decided in the broadest manner that "An ex- "emption from taxation resting in contract is annexed by "the terms of the law, which created it to the *road itself* "*and not to the companies.*"

It was accordingly held that a purchaser of the road, with its rights, franchises, privileges and immunities, was exempt.

This being so, the State statute has been construed by the highest court in the State; that construction is binding on this court.

In *R. R. Co.* vs. *Gaines*, 97 *U. S., at* 709, the Chief Justice, in delivering the opinion of the court, refers to the great caution which should be exercised, even where the

question is open, in exercising the delicate power confided by the Constitution of reversing a judgment of a State court.

Mr. Justice Bradley, delivering the opinion of the court in *Burgess* vs. *Seligman* (January 29, 1883), uses the following language, laying down the precise reasons why the decisions of the State courts in Missouri, in two previous cases, would not be followed, and stating when decisions of State courts would be conclusive :

"We do not consider ourselves bound to follow the de-
" cions of the State court in this case. When the trans-
" actions in controversy occurred, and when the case was
" under the consideration of the Circuit Court, no con-
" struction of the statute had been given by the State tri-
" bunals contrary to that given by the Circuit Court. * *
" * * Since the ordinary administration of the law is car-
" ried on by the State courts, it necessarily happens that,
" by the course of their decisions, certain rules are estab-
" lished which become rules of property and action in
" the State, and have all the effect of law, which it would
" be wrong to disturb. This is especially true with regard
" to the law of real estate, and the construction of State
" constitutions and statutes. Such established rules are
" always regarded, by the Federal courts no less than by
" the State courts themselves, as authoritative declarations
" of what the law is. But where the law has not been
" thus settled, it is the right and duty of the Federal
" courts to exercise their own judgment, as they always
" do in reference to the doctrines of commercial law and
" general jurisprudence."

The opinion of the court continues, after stating the cases in which the Federal courts must exercise an independent judgment, as follows :

"But even in such cases, for the sake of harmony and
"to avoid confusion, the Federal courts will lean toward
"an agreement of views with the State court if the ques-
"tion seems to them balanced with doubt."

This, the latest case on this subject, expresses the present position of the court, and cites all the decisions.

It will not be doubted that the decision in *Gonzalez* vs. *Sullivan*, expressed what then was, and what still is the opinion of the highest State court on the construction of § 18 of the Improvement Act. The court in this case (Record, p. 26), reiterates at length its previous decision, that there shall be no mistake concerning it.

At page 33 the court adds that it now decides "in "favor of the validity of the statute imposing the tax *in* "*order to its review by the Supreme Court of the United* "*States,*" * * * * saying that "it is our wish, as it "is our duty, to do all we can consistently to give the "people of this State the benefit of that jurisdiction."

In this case, therefore, the highest State court, five years ago, made an authoritative declaration of the law with reference to the construction of the State Constitution and a State Statute, and, in a new case arising on the same point it reiterates this decision most distinctly, and states substantially that although such is its view of the law, and such the rule of property and action in the State which it cannot conscientiously disturb, still it is quite ready technically to reverse the judgment of the court below, in order to afford this court an opportunity of giving a different judgment, if it can be induced to do so.

We urge that this court, notwithstanding the fiction under which the case comes here, is bound to follow the decisions of the State court as to its constitution and statutes. The exemption granted is a rule of property which has followed this railroad from purchaser to purchaser, and which has been held out by the State of Florida as an inducement to foreign capital.

The Supreme Court of Florida refuses, with all the pressure brought to bear, to REALLY reverse its decision, and this court, under the peculiar circumstances under which this case comes before it, is as much bound, under the rules of law laid down, as if the case had come to the court on some other point, and this point were now raised for the first time.

The plaintiff in error can add nothing to the facts which are patent, in view of the expressions of the Supreme Court of Florida.

If, as stated by Mr. Justice Bradley, in the case above quoted, it was wrong to disturb rules which had become rules of property and action in the State of Florida, will this court complacently lend itself to do that which the courts of Florida decline to do, and which it declares ought not to be done ?

Point VI.

Without resting on the conclusiveness of the decision in *Gonzalez* v. *Sullivan*, it is submitted that the grounds of the decision in that case were correct. The same reasons apply to extend the exemption to the plaintiff in error, which has succeeded to the position then occupied by the Pensacola and Louisville Road.

The exemption granted by § 18 of the Internal Improvement Act [Appendix A], carefully distinguished in its terms between *Companies* and *Roads*. The object of the Legislature, in pursuance of a direction of the State constitution, was to encourage a liberal system of internal improvements, to develop the resources of the State. Accordingly, it was enacted that "the Roads, their fixtures and "appurtenances, including * * *, and property of every "description needed for the purpose of transportation of "freight and passengers, or for the repair and maintenance of the Roads, shall be exempt from taxation while "the Roads are under construction, and for the period of "thirty-five years from their completion."

The line of road now operated by the plaintiff in error was brought within the provisions of this act in these terms :—"A *line of railroad* to be constructed from the "City of Pensacola, or any other point or points on the "waters of Pensacola Bay, or the waters of the St. Andrew's Bay to the north line of the State, leading in the "direction of Montgomery, Alabama, shall be considered

"" as proper improvements to be aided from the Internal "" Improvement Fund, in the manner provided for " in the Internal Improvement Act,—language which the Supreme Court of Florida, in discussing the point in *Gonzalez* v. *Sullivan*, held sufficient to entitle this line of road to the provisions of § 18 of the act.

The exemption was attached to a particular *line of railroad*, not to any particular corporation, for no company is even mentioned by name.

It was temporary,—for thirty-five years, and was one of the benefits held out to induce the public to invest capital. The course of legislation in the State shows the exemption was not personal, but that it was granted and continued to carry out the system of improvement, as a compensation for the disabilities imposed by other sections of the act.

The Improvement Act constituted a general system; it provided for a grant of land to the improvement fund; for certain restrictions in the manner of construction of the roads, as appears by §§ 1-9; for the issue of bonds, the interest on which is to be provided for by the Company, and which bonds are to be devoted to particular objects.

By § 11, &c., it subjects the roads to certain disabilities and burdens; § 14 secures to the State stock in return for any payments made for interest on bonds issued.

By § 15, a land grant is given to each of the roads, under certain restrictions as to sales.

By § 18, exemption from taxation is granted. The remaining sections up to 32, contain general provisions forming part of the adopted system, and applicable to the roads generally—too long to mention in detail; but among them, by § 20, it is provided that no competing road shall be constructed within 25 miles of any of the roads contemplated by the act, unless a consent is obtained; by § 23, the terms on which the mails are to be carried are laid down; and § 19 prescribes specific penalties for any fraudulent issue of stock or bonds.

The companies placed under disabilities by § 11, where a sinking fund is provided for; by § 12, where payment to the sinking fund is required and which, by § 14, are to

deliver to the State stock in payment for any interest advanced by the State, are the "roads accepting the pro-"visions of this act." The lines of road between certain points are the lines accepting the provisions of the act, and the names by which they are called are of no importance.

Now, it could not be contended seriously that if a corporation which "accepted the provisions of the act," obtained a land grant and obtained the bonds of the State, was foreclosed, and sold,—its successor, which retained all the property, could escape all the burdens imposed, by alleging that they were *personal burdens* of the original company, and did not pass on a sale.

How, then, can the State of Florida deny to succeeding corporations the benefits also? The corporations which are to make payments into the sinking fund are the roads accepting the provisions of the act; they are the same precisely that are exempted from taxation. The act must be taken as a whole.

The Constitution of Florida, in 1855, whether wisely or unwisely, according to the progress of events, aimed to encourage and establish certain designated lines of road; to govern their lines of road in the hands of whoever they might be, and at all times, by the provisions of the Improvement Act, to secure to them in like manner certain benefits, and among them exemption from taxation.

In *State of New Jersey* vs. *Wilson*, 7 *Cranch*, 164, a decision that has never been questioned in this court, exemption from taxation was upheld, where the property originally exempted had passed to a third person, because the act provided that "the lands to be purchased for the Indians shall not hereafter be subject to any tax."

Here, in equally strong language, "the roads" were exempted.

See also *State of Tenn.* v. *Hicks, Ewing & Co.*, cited in *State* v. *Whitworth*, 8 *Lea* (*Tenn.*), 594.

C., M. & St. P. R. v. *Pfaender*, 23 *Minn.*, 217.

Gonzales v. *Sullivan*, 16 *Fla.*, 791.

And the series of cases in the Northwest, as to exempted land grants.

St. P. & P. R. R. Co. v. *Parcher*, 14 *Minn.*, *at* 328, *sq.*; followed 21 *Minn.*, 315; 26 *Minn.*, 294.

Winona & St. P. R. R. v. *County of Deuel*, 7 *Am. & Eng. R. R. Cas.*, 348. (1882.)

It is to be borne in mind that in claiming this exemption until 1895, the plaintiff asks nothing that the people of Florida were not willing to grant in return for the benefits to follow the construction of the road exempted. By the terms of the grant, it was quite immaterial who did the work; the object was to have this line of communication opened and operated. This the Louisville and Nashville R. R. Co. is doing; and in return, it asks for nothing more than what the people of the State solemnly declared should be accorded.

The question here differs materially from that presented in several cases, which will be relied on as leaning toward a conclusion adverse to the exemption here claimed.

In *Morgan* v. *Louisiana*, 93 *U. S.*, 217, the act incorporating the company exempted gave that corporation a simple personal exemption from taxation by name, without imposing corresponding disabilities. The exemption was of the works, fixtures, &c., &c., and other appurtenances of *the particular company*. Its property and franchises were sold under foreclosure, and it was decided that the exemption did not pass to a purchaser of the "property and franchises" of the company.

The decision was expressly limited (p. 224), the court saying: "All that we now decide is that such immunity is "not itself a franchise of a railroad corporation which "passes as such, without other description, to a purchaser "of its property."

R. R. Co. v. *County of Hamblen*, 102 *U. S.*, 273, decided nothing more than that, as the State's lien under which

the road was sold was only "on the property, stock and franchises of the company," a purchaser, under a sale to enforce that lien, could not claim that he had acquired immunity from taxation, since it had already been decided that exemption from taxation was not a "franchise," such as would pass by a sale under a mortgage on "property and franchises."

Taking this ground, the court declined (p. 277–8) even to consider whether the purchased company was exempt.

The Act conferring the immunity here also, bestowed it upon a particular company by name, in the first instance.

The latest decision, *Wilson* v. *Gaines*, 103 *U. S.*, 417, involved precisely the same point, except that the State's lien, which was enforced, apparently extended to the "property" only of the company.

The court stated that it was unnecessary to determine the question on which the decision seems to have turned in the court below, as the exemption was not shown to have passed to the purchasers at the sale to foreclose the State's lien.

The question here discussed was not involved in either *R. R. Cos.* v. *Gaines*, 97 *U. S.*, 697, 711–2, or *R. R. Co.* v. *Commrs.*, 103 *U. S.*, 1.

None of these cases, therefore, goes so far as to decide that the sale of an exempt railroad, with all its "privileges and *immunities*," will not pass exemption from taxation to the purchaser, for that question was not before the court.

The contrary is involved in the decisions in

Kv. and O. R. R. v. *Hicks*, 9 *Baxter*, 442, commented on and not disapproved in *R. R.* v. *County of Hamblen*, 102 *U. S.*, 277.

Lv. and Nv. R. R. v *Gaines*, 3 *Fed. Repr.*, 266; 2 *Flippin*, 621.

Hand v. *Sav. and Ch. R. R. Co.*, 17 *S. Car.*, 219, *at* 278, *sq.*

The dictum in *Wilson* v. *Gaines*, 103 *U. S., at* 421, is much broader than the decision in *Morgan* v. *Louisiana.*

The plaintiff in error, while in the position of a purchaser by a deed conveying "all the property, franchises, rights and immunities" of an exempt road, shows in addition that it is entitled to the exemption "under the authority of the Legislature which granted the exemption," to use the language of Mr. Chief Justice Waite in the dictum referred to, alike by an admission in the pleadings, by special legislation, and on a fair and just consideration of the eighteenth section of the Internal Improvement Act.

The plaintiff in error, therefore, appears before the court as the owner of a railroad purchased with the assent and at the invitation of the State of Florida, to assist in carrying out her improvement system, where immunity from taxation was held out as a principal inducement to the original constructors and to purchasers of the road, and where the several transfers were distinctly recognized by the State.

Before the plaintiff purchased, the Supreme Court of Florida had settled beyond controversy or dispute, that this particular property and this road were exempt from taxation, not as a privilege attached to any particular owner, but as an exemption attached to the property, as property, irrespective of ownership, and that the exemption followed the property.

On the transfer, the road, its property, rights, privileges and immunities were transferred, and this is admitted by the pleadings.

A new attempt being made to tax the property in its present hands, an injunction is granted, and on appeal to the Supreme Court of the State, the court is urged to allow the case to go to this court, to do which required a reversal of the decision below granting the injunction.

The Supreme Court of Florida, while not unwilling to yield to this demand, neverthelss felt compelled to repeat what was decided four years before by the same court—and tacitly to reaffirm that decision. Having done this, it

reversed the decision below, in obedience to a supposed duty to give the people of Florida the benefit of an appeal to this court.

That benefit consists in an attempt to break a contract which the highest court of the State of Florida declares valid and binding, which has been the settled law of the State for years, and a rule of property, and under which not only the State improvements have been pushed forward, but the State has received full payment for the privilege granted.

This court is invited to do what the State court itself is unwilling to do. According to the rules laid down in many cases and summed up in *Burgess* vs. *Seligman*, it is submitted that the judgment of the Supreme Court of Florida should be reversed.

JOHN L. CADWALADER,
For Plaintiff in Error.

APPENDIX A.

LAWS OF FLORIDA. CHAPTER 610. (1855.)

AN ACT to provide for and encourage a liberal system of Internal Improvements in this State.

Whereas, the Constitution of this State declares "that a liberal system of Internal Improvements, being essential to the development of the resources of the country, shall be encouraged by the Government of this State, and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law, proper objects of improvements in relation to roads, canals and navigable streams, and to provide for a suitable application of such funds as may be appropriate for such improvements," therefore,

[Sections 1–18 contain the provisions as to the system adopted.]

SEC. 18. *Be it further enacted*, That the capital stock of any railroad company accepting the provisions of this act, shall be forever exempt from taxation, and the Roads, their fixtures and appurtenances, including workshops, warehouses, vehicles and property of every description needed for the purpose of transportation of freight and passengers, or for the repair and maintenance of the Roads, shall be exempt from taxation while the Roads are under construction, and for the period of thirty-five years from their completion, and that all the officers of the companies, and servants, and persons in the actual employment of the companies, be and are hereby exempt from performing ordinary patrol or militia duty, working on public roads and serving as jurors.

[Sections 19–30 contain further provisions.]

[Passed the House of Representatives, December 29, 1854. Passed the Senate, January 2, 1855. Approved by the Governor, January 6, 1855.]

APPENDIX B.

LAWS OF FLORIDA. CHAPTER 734. (1855.)

AN ACT to facilitate the construction of the various lines of railroads, provided for by the act entitled, "An Act to provide for and encourage a liberal system of Internal Improvements in this State," approved 6th January, 1855.

[SECS. 1–3. Modify certain requirements of the Internal Improvement Act.]

SEC. 4. *Be it further enacted*, That a line of railroad, to be constructed from the City of Pensacola, or any other point or points on the waters of Pensacola Bay, or the waters of the St. Andrew's Bay to the north line of the State, leading in the direction of Montgomery, Alabama, shall be considered as proper improvements to be aided from the Internal Improvement Fund in the manner provided for, or may hereafter be provided for, in "An Act to provide for and encourage a liberal system of Internal Improvements in this State," approved January 6, 1855.

[Passed the Senate, December 11, 1855. Passed the House, December 12, 1855. Approved, December 14, 1855.]

APPENDIX C.

LAWS OF FLORIDA. CHAPTER 483. (1852–3.)

AN ACT giving to the Alabama and Florida Railroad Company the right to extend their road into the State of Florida, and construct branch roads with chartered privileges.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida, in General Assembly convened*, That Walker Anderson, W. H. Chase, B. D. Wright, O. M. Avery, of Pensacola, Florida; U. Boulevare, John G. McLane, J. G. Robinson, A. J. Robinson, W. T. Sterns, C. Snowden, W. Ashley, Asa Johnson, T. McIver, A. Russel and A. Fowler, of Conecuh County, Alabama; E. J. Pickens, L. J. Bowling, W. J. Streety, James Dunklin, J. J. Burnett, H. L. Henderson, H. B. Taylor, B. W. Henderson and J. L. McMullen, of Butler County, Alabama; C. Webb, A. J. Perry, G. Harrison, J. C. Swanson and John Walker, of Lowndes County, Alabama, and C. Cromlin, J. E. Belser, E. Langford Lazer, John Craigen, J. J. Seibles, B. S. Bibbs, B. W. Hilliard, E. Barnes, Jas. R. Dilliard, R. Wall and G. Matthews, be and they are hereby appointed commissioners to open books and receive subscriptions for stock in a railroad to be constructed from some point or points on the Bay of Pensacola, in Florida, to the City of Montgomery, in Alabama, any three of whom may open in the Cities of Pensacola and Montgomery, and such other places as they may think proper, and keep the same open until the whole capital stock is subscribed; and they shall give public notice of times and places of opening said books, not less than twenty days, as they may think proper.

SEC. 2. *Be it further enacted*, That the capital stock of said company may be one million five hundred thousand dollars, with the privilege of increasing it to two million five hundred thousand dollars, should an increase be found necessary for its construction and future management.

SEC. 3. *Be it further enacted*, That said railroad shall extend from some point or points on the Bay of Pensacola to some point on the boundary line between the States of Florida and Alabama, in the County of Conecuh, lying north of Pensacola Bay, and at which point said road may meet and connect with a railroad leading thence to the City of Montgomery.

SEC. 4. *Be it further enacted*, That as soon as one hundred thousand dollars shall have been subscribed to the capital stock of said company, the subscribers of said stock, their successors and assigns shall be, and they are hereby declared to be incorporated into a company by the name of the Alabama and Florida Railroad Company, and by that name shall be capable in law of purchasing, holding, leasing, selling and conveying real, personal and mixed property so far as shall be necessary for the purpose of this incorporation, and by said incorporated name may sue and be sued, plead and be impleaded, answer and be answered unto in any court of law or equity in this State, or elsewhere, and to have and use a common seal, and the same to alter or amend at pleasure—to pass such by-laws, rules and ordinances for the good government of said corporation as to them may seem proper, and generally do all things necessary to carry into effect fully and completely the object of this act.

SEC. 5. [Refers to Meeting of Subscribers and Election of President and Directors, and the Manner of Voting.]

SEC. 6. [Refers to Annual Choice of President and Directors, Vacancy, how filled, and Power of Removal.]

SEC. 7. [Refers to other powers—to Borrow Money, &c.]

SEC. 8. [Refers to Payment of Instalments and Forfeiture for Non-payment.]

SEC. 9. [Refers to Purchasing Land and the Assessment of Damages when price not agreed to, and to taking an Appeal from the Same.]

SEC. 10. [Refers to the Oath of Jury.]

SEC. 11. [Refers to Condemned Property.]

SEC. 12. [Refers to Injury to Road—Punishment for.]

SEC. 13. [Refers to Obstructing Public Road.]

SEC. 14. [Refers to Making Payments.]

SEC. 15. [Refers to Tolls.]

SEC. 16. [Refers to Reservation by Genl. Assembly.]

SEC. 17. [Refers to Banking Privileges.]

SEC. 18. [Refers to Commencing Building of Road.]

SEC. 19. [Refers to Branch Roads.]

SEC. 20. *Be it further enacted*, That the company hereby incorporated shall have power to unite with the Alabama and Florida Railroad Company incorporated by act of the Legislature of Alabama, approved eleventh of February, one thousand eight hundred and fifty, in such manner as they may think proper.

[Passed the Senate, Dec. 20, 1852; passed the House of Representatives, Dec. 30, 1852; approved by the Governor, Jan. 8, 1853.]

APPENDIX D.

LAWS OF FLORIDA.—CHAPTER 1915.—(1872.)

AN ACT to amend an act entitled "An Act to incorporate the Pensacola and Louisville Railroad Company," approved July 16, 1868.

"*The People of the State of Florida, represented in Senate and Assembly, do enact as follows:*

SECTION 1. That the said act entitled "An Act to incorporate the Pensacola and Louisville Railroad Company," approved July 16, 1868, be amended so as to read as follows: That William A. Richardson, R. W. Johnson, H. F. Swope, L. Richardson, R. W. Ruter, J. C. Whiting, J. Abercrombie, A. C. Blount, S. C. Cobb, and A. Fink, their successors and assigns be, and are hereby, incorporated under the name of the Pensacola and Louisville Railroad Company, and by and under said name shall have, hold and enjoy the franchises, rights and privileges hereinafter provided. The said railroad extending from the City of Pensacola, or any other point on the waters of Pensacola Bay, to the north line of the State of Florida, at any point west of the easterly line of Walton County, and connecting at any railroad or railroads within the State of Alabama.

SEC. 2. *Be it further enacted*, That the capital stock of said company shall be three hundred thousand dollars, with the privilege of increasing it to seven hundred thousand dollars, should such an increase be found necessary for its construction and future management, and shall be divided into shares of one hundred dollars each.

SEC. 3. *Be it further enacted*, That as soon as one hundred thousand dollars shall have been subscribed and paid into the capital stock of said company, the subscribers of said stock, their successors and assigns, shall be, and are hereby, declared to be incorporated into a company by the name of the Pensacola and Louisville Railroad Company, and by that name shall be capable in law of purchasing, holding, leasing, selling and conveying real, personal and mixed property, so far as shall be necessary for the purpose of this incorporation, and by said incorporated name may sue and be sued, plead and be impleaded, answer and be answered unto in any court of law or equity in this State or elsewhere, and to have and use a common seal, and the same to alter or amend at pleasure; to pass such by-laws, rules and ordinances for the good government of

said corporation as to them may seem proper, and generally to do all things necessary to carry into effect fully and completely the objects of this act; and a majority of the subscribers, or a majority of those holding a majority of shares in said company, shall elect nine directors by ballot, to manage the affairs of said company, and the directors thus chosen shall elect, among themselves, a president of said company, and allow him such compensation as they may think proper, and on all occasions, whenever a vote of stockholders shall be taken, each stochholder shall be allowed one vote for each share owned by him or her, and any stockholder may depute, in writing, any other person to vote and act for him or her as his or her proxy.

SEC. 4.—[Refers to choosing president and directors annually, and vacancy and removals.]

SEC. 5.—[Refers to other officers and by-laws.]

SEC. 6.—[Refers to acquiring property for construction of the road, jury to assess damages, and appeal.]

SEC. 7.—[Refers to oath of jurors.]

SEC. 8. [Refers to Banking.]

SEC. 9. [Refers to Certificates of Stock.]

SEC. 10. [Refers to Commencement of Road.]

SEC. 11. [Refers to Improvements.]

SEC. 12. [Refers to interfering with vested rights of any other corporation.]

SEC. 13. "*Be it further enacted*, That the president and directors of said company shall have the same power to construct branches of said road that this charter gives them to construct the main line, and with the same rights and privileges and with the same duties and restrictions, and it shall be lawful for said company to purchase, lease, acquire an interest in, to unite or consolidate with, lease or sell to any other railroad company in or out of the State, and to make the same one company, with a consolidated stock and property, and with one Board of Directors.

"*Provided*, That after such purchase, acquisition of interest, consolidation, lease or sale, there shall not be any cessation in the operation of the road, nor discrimination in freight tariffs, rates of passage, schedules, or otherwise, against the interests of the people of Florida; and upon such purchase, lease, sale, or consolidation, the companies that are parties thereto may adopt a corporate name and shall have all the powers and privileges conferred upon the Pensacola and Louisville Railroad Company."

SEC. 14. [Refers to Penalty for Injury to Road.]

SEC. 15. [Refers to Through Freights.]

SEC. 16. [Refers to Payment of Subscriptions and Forfeiture.]

SEC. 17. [Refers to Notice and Sale of Freight and Proceeds of the Sale.]

SEC. 18. "*Be it further enacted*, That the Pensacola and Louisville Railroad Company having become the assignee of the Alabama and Florida Railroad, of Florida, and the franchises of the said corporation, and being in possession of and operating the said line of road, which corporation was exempt from taxation for a limited period, the said Pensacola and Louisville Railroad Company and its property, now owned or hereafter to be acquired, shall also be exempted from taxation during the remainder of said period."

[Became a law without the approval of the Governor, February 4, 1872.]

APPENDIX E.

LAWS OF FLORIDA, CHAPTER 3069 (1877).

AN ACT to incorporate the Pensacola Railroad Company, and to authorize it to become the purchaser and assignee of the property, rights, franchises, privileges and immunities of the Pensacola and Louisville Railroad Company.

The People of the State of Florida, represented in Senate and Assembly, do enact as follows:

SECTION 1. That Daniel F. Sullivan, Martin H. Sullivan, Gustavus A. Stanley, Thomas H. Hunt and Richard L. Campbell, and their successors or assigns, shall be and they are hereby constituted a body corporate under the name and style of the Pensacola Railroad Company, and by that name they may sue and be sued, and have and use a common seal, and the same alter at pleasure; pass such by-laws, rules and ordinances for the good government of said corporation as to them may seem proper, and generally exercise all the rights and enjoy all the privileges and immunities of a corporation.

SEC. 2. *Be it further enacted*, That the said Pensacola Railroad Company be and it is hereby authorized and empowered to acquire by purchase and assignment all the property, rights, franchises, privileges and immunities of the Pensacola and Louisville Railroad Company, a corporation created by an Act of the General Assembly of the State, approved July 16, A.D. 1868, whether the same were acquired under the laws of the States of Florida or Alabama or the laws of the United States, or as the assignee and successor of the Alabama and Florida Railroad Company; and upon completion of the said purchase and assignment, the said Pensacola Railroad Company shall be deemed in law and equity to be fully invested with and entitled to all the said property, rights, franchises, privileges and immunities of said Pensacola and Louisville Railroad Company, as though the same were originally granted to or acquired by the said Pensacola Railroad Company.

SEC. 3. *Be it further enacted*, That the capital stock of said Pensacola Railroad Company shall be three hundred thousand dollars, which may be increased to six hundred thousand dollars, divided into shares of one hundred dol-

lars each; and each share shall be entitled to one vote at elections held by stockholders, and may be cast by proxy.

SEC. 4. *Be it further enacted*, That the affairs of said corporation shall be managed by a Board of five Directors, to be annually elected by the stockholders, who shall hold over until their successors are appointed; and all vacancies in said board shall be filled in such manner as the by-laws may direct.

[Approved February 27, 1877.]

APPENDIX F.

LAWS OF KENTUCKY—CHAPTER 278 (1878).

AN ACT to amend the charter of the Louisville and Nashville Railroad Company:

WHEREAS, In consequence of the lease of the Nashville and Decatur Railroad from Nashville to Decatur, and the completion of the South and North Alabama Railroad from Decatur to Montgomery by the the Louisville and Nashville Railroad Company, and of its ownership of a majority of the capital stock of the North and South Alabama Railroad Company (all requiring a large investment of money), the stockholders of the Louisville and Nashville Railroad Company have become largely interested in the commerce and railroad business between the States of Kentucky and Tennessee and the Southeast, and the several railroad connections in that part of the country; and, in order to protect and promote their interest and legitimate business, the president and directors believe it may become necessary for the company to operate, lease or purchase other railroads not lying within the State of Kentucky, and to that end that the charter of the company should be amended; therefore,

Be it enacted by the General Assembly of the Commonwealth of Kentucky,

§ 1. That the charter of the Louisville and Nashville Railroad Company be, and is hereby, so amended as to authorize its president and directors, with the assents or approval of a majority in interest of the stockholders of the company present or represented at any annual or called meeting thereof, to operate, lease or purchase, upon such terms or in such manner as they deem best, any railroad in any other State or States deemed necessary for the protection of the interest of the stockholders.

[Approved March 6, 1878.]

APPENDIX G.

To the judge of the Circuit Court of the First Judicial Circuit of the State of Florida, in and for Escambia County, in Chancery, sitting:

Daniel F. Sullivan, of said county, brings this his bill against Samuel Z. Gonzalez, as State and County Tax Collector for said county.

And thereupon your orator complains and says, that the said respondent has levied upon and advertised for sale, on the 6th day of August next, for State and County taxes alleged to be due for the year 1876, and amounting to $84,826.\frac{84}{100}$, the track of the railroad situated in said county, known as the Pensacola and Louisville Railroad, together with the locomotives, passenger, freight and other cars, and machine shops belonging thereto.

And your orator further shows unto your Honor, that the said Pensacola and Louisville Railroad is the same railroad that was formerly known as the Alabama and Florida Railroad Company, a corporation chartered by an Act of the General Assembly of said State of Florida, approved January 8, 1855, and that the said Alabama and Florida Railroad, with all and singular the stations, depots, buildings, engine-houses, road-bed, superstructure, tracks, and other improvements and constructions thereon made, and all the rights, privileges, easements and franchises of the said Alabama and Florida Railroad Company, was sold under a decree of foreclosure and sale rendered by this court on 31st of May, 1872, and purchased by the Pensacola and Louisville Railroad Company, a corporation chartered by an Act of the General Assembly of this State, approved 4th of February, 1872, as will more fully appear from Exhibits A, B, C, herewith filed, and prayed to be taken as a part hereof.

And your orator further shows unto your Honor, that by the 18th section of an Act of the General Assembly of this State, entitled, An Act to provide for and encourage a liberal system of Internal Improvements in this State, approved 6th January, 1855, it was provided: "That the capital stock of any Railroad Company accepting the pro- "visions of this Act shall be forever exempt from taxa- "tion; and the roads, their fixtures and appurtenances, "including workshops, warehouses, vehicles and property "of every description needed for the purpose of freight "and passengers, or for the repair and maintenance of "the roads, shall be exempt from taxation while the roads

"are under construction and for the period of thirty-five "years from their completion."

And your orator further shows un o your Honor, that by an act of the General Assembly of this State, entitled "An Act to facilitate the construction of the various lines "of railroad provided for by the act entitled 'An Act to "'provide for and encourage a liberal system of Inter-"'nal Improvements in this State,'" approved 6th January, 1855, approved 14th December, 1855, it was provided by the 4th section thereof: "That a line of railroad, "to be constructed from the City of Pensacola, or "any other point or points on the waters of Pensa-"cola Bay, or the waters of St. Andrew's Bay, to the "north line of the State, leading in the direction of Mont-"gomery, Alabama, shall be considered as proper im-"provements to be aided from the Internal Improvement "Fund, in the manner provided for, or may be hereafter "provided for, in an Act to provide for and encourage a "liberal system of Internal Improvements in this State," approved January 6th, 1855. That the said Alabama and Florida Railroad Company availed itself of the benefit of said 4th section of said Act of 14th December, 1855, by constructing and completing, on or about the 1st of July, 1860, the line of railway therein provided for, to wit, from the City of Pensacola to the north line of the State, in the direction of Montgomery, Alabama, as your orator is informed and believes, by doing all other things necessary to entitle it to all the benefits of the 18th section of the said Act of 6th January, 1855; and that by another Act of the said General Assembly, entitled "An Act granting to the Alabama and Florida Railroad Company alternate "sections of the swamp and overflowed lands," approved January 15th, 1859, as well as by the action of the Board of Internal Improvements, as your orator is informed and believes, in setting apart to said railroad, in pursuance of said act, its quota of said lands, the said Alabama and Florida Railroad was recognized and adopted as one of the roads entitled to all the benefits of the Act to provide and encourage a liberal system of Internal Improvements in this State, approved 6th January, 1855.

And complainant further shows that the said Alabama and Florida Railroad Company, on the 12th of March, 1856, notified the Board of Internal Improvements of its acceptance of the terms of the Act in relation to Internal Improvements, approved January 6, 1855; and also of the provisions of that act, approved December 14, 1855, as appears by the certificate hereunto attached, and marked "L."

And your orator further shows unto your Honor that he is the owner of the equity of redemption of the said Pensacola and Louisville Railroad, as well as of all the other property levied upon and advertised for sale as aforesaid by respondent, and that your orator is the owner and holder of 532 of the 600 bonds of 1,000 dollars each, to secure which said Pensacola and Louisville Railroad, and all the above-mentioned property, as well as its rights, privileges and franchises are now under mortgage.

And your orator further shows unto your Honor that said Pensacola and Louisville Railroad, and the other property levied upon and advertised for sale as aforesaid by respondent, are exempt from taxation in this State, until the year 1895; and that the said proposed sale by respondent would manifestly tend to cloud the title of said railroad and other property.

To the end, therefore, that the said respondent may answer this bill of complaint, and that your Honor may restrain and enjoin the said respondent from proceeding to sell as aforesaid said Pensacola and Louisville Railroad, or its passenger, freight or other cars, machine shops, or anything else belonging thereto and required for the repair and maintenance thereof, for the payment of said alleged taxes; and that your orator may have such other and further relief as unto your Honor may seem meet and agreeable to equity and good conscience.

May it please your Honor to grant unto your orator the State's writ of subpœna, as well as the injunction hereinbefore prayed for, to be directed to the said Samuel Z. Gonzalez, as State and County Tax Collector for the said County of Escambia, commanding him on a certain day, and under a certain penalty, to answer this bill of complaint, and to abide such further order and decree as your Honor may make in the premises.

RICHARD L. CAMPBELL,
G. A. STANLEY,
Solicitors for Complainant.

APPENDIX H.

GONZALEZ v. SULLIVAN, 16 FLA., 791.

The Constitution, operative in this State in 1855, made it the duty of the Legislature to designate objects of improvement which shall constitute a State system. The Legislature in that year (January 6, 1855) designated certain improvements as proper objects to be aided from a trust fund created by it and thus establish a system. The primary purpose of this legislation was the construction of the works belonging to the system, not the extension of aid or bounty to the corporations having the right to construct the works so designated. The aid extended by the act was the consideration to the companies, having or to have the right to construct the works, to accept the provisions of the law, thus bringing themselves within the system, subject to its control and regulations. The designation of a road "as a proper improvement to be aided from the fund" created by the act made it an improvement belonging to the system, and the acceptance of the provisions of the law by the company having the right to construct it gave the company the rights granted. Each road was, under the terms of the law, exempt from taxation during its construction and for thirty-five years from its completion. This exemption, rested in contract, was attached to the property and could not be subsequently divested by the State.

MR. JUSTICE WESTCOTT delivered the opinion of the court, as follows:

The Constitution, operative in this State in 1855, provided that "a liberal system of internal improvements being essential to the development of the resources of the country, shall be encouraged by the Government of this State, and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law proper objects of improvement in relation to roads, canals and navigable streams, and to provide for a suitable application of such funds as may be appropriated for such improvements." In 1855 the General Assembly, reciting this clause of the Constitution, passed an act (Chap. 610, Laws) "to provide for and encourage a liberal system of internal improvements in this State." In the fourth section of this act the Legislature, in discharge of its constitutional duty to ascertain and declare by law proper objects of improvements, declared that "a line of railroad from the St. Johns river at Jacksonville and the waters of Pensacola bay, with an extension from suitable points on said line to St. Marks river or Crooked river, at White Bluff, on Apalachicola bay, in Middle Florida, and to the waters of St. Andrews bay in West Florida, and a line from Amelia Island on the Atlantic to the waters of Tampa bay in South Florida, with an extension to Cedar Key in East Florida, also a canal from the waters of St. Johns river on Lake Harney to the waters

of Indian river, are proper improvements to be aided from the Internal Improvement Fund."

The 5th section of the act provided that "the several railroads now organized or chartered by the Legislature, or that may hereafter be chartered, any portion of whose routes as authorized by their different charters and amendments thereto, shall be within the lines of routes laid down in section four, shall have the right and privilege of constructing that part of the line embraced by their charter, on giving notice to the Trustees of the Internal Improvement Fund of their full acceptance of the provisions of this act, specifying the part of the route they propose to construct, and upon the refusal or neglect of any railroad company now organized to accept, within six months from the passage of this act, the provisions of the same, any other company duly authorized by law may undertake the construction of such part of the line as they may desire to make, and which may not be in progress of construction under a previous charter."

The 18th section of the act provided that "the capital stock of any company accepting the provisions of this act shall be forever exempt from taxation, and the Roads, their fixtures and appurtenances, including workshops, warehouses, vehicles, and property of every description needed for the purpose of transportation of freight and passengers, or for the repair and maintenance of the Roads. shall be exempt from taxation while the Roads are under construction, and for the period of thirty-five years from their completion."

A careful examination of this legislation will show that aid to railroad companies as corporations, with power to construct even the lines of railway indicated, was not its primary purpose. The constitutional provision looked to "a liberal system" as "being essential to the development of the resources of the country," and its mandate of duty to the Legislature was to ascertain by law *proper objects* of improvement. In no one of these sections do we find any company named as the one to receive the benefits of the act. If the charters of any company then existing covered any portions of the *lines ascertained and named as a part of the system*, then, without reference to any incidental benefit which might accrue to these companies, and only because a line or route embraced within their charters came within the system, such companies became entitled to the benefits of the act upon complying with whatever, under its terms, were the conditions upon which a right to such benefits, grants, or exemptions enured or vested. They became entitled to these benefits only

through the accidental fact that they had legal rights and franchises vested in them as to certain lines and routes of railway which the Legislature had, in conformity to constitutional duty, declared "proper objects of improvement." This is nowhere more manifest than in the section granting exemption from taxation where the rule of taxation fixed is that there shall be no taxation of the capital stock at any time, and that as to the property, "the roads, their fixtures and appurtenances, &c., shall be exempt from taxation while the roads are under construction, and for the period of thirty-five years from their completion." This is a legislative act offering an exemption from taxation of the improvements which the State desired constructed for the time named, in consideration of the acceptance of the provisions of the Internal Improvement Act by the company having the legal right to construct them. Whether this was a correct or wise exercise of legislative discretion, viewed in the light of public policy, is not a judicial question. We will not enter that field. The question here is one of power, not of policy. A simple reading of the Internal Improvement Act, together with the charters of the several companies having the right to construct these roads, or any part thereof, at the time of its enactment, will show that many additional requirements were made of them by the State through this act. Some of these were the provisions in reference to the transportation of the mail (section 23), the limitation as to the price to be paid for transportation for other roads (section 25), and the many requirements as to manner of construction (section 6).

Our conclusion in reference to this branch of the subject is, that the acceptance of the provisions of the Internal Improvement act by these companies constituted such act, to requirements and its benefits, a portion of their several charters, that such requirements became the law of their being, and that the grant of exemption by the State was a contract between the State and the companies owning the road. 13 *Wall.*, 264; 15 *Fla.*, 637. We think also that the right and privilege of exemption is annexed by the terms which create it to the property.

In the case of the *State of New Jersey* vs. *Wilson*, 7 *Cranch*, 164, it appeared that the Legislature of the State of New Jersey had passed an act authorizing a purchase of lands for the Indians. The act provided that the lands to be purchased "shall not hereafter be subject to any tax." A subsequent act repealed this section granting this exemption. The questions before the court were, what was the effect of the first enactment, and the result

of the second? Mr. Chief Justice Marshall, speaking for the court, says: "The privilege, though for the benefit of the Indians, is annexed by the terms which create it to the land itself, not to their persons. It is for their advantage that it should be annexed to the land, because, in the event of a sale in which alone the question could become material, the value would be enhanced by it." So here, the privilege, the exemption, is annexed to the road itself. We have before said this legislation is throughout as to the roads and their construction. True, the companies are the agents through which their construction is to be accomplished, but benefit to these companies is the incident; the construction of the road, the completion of the system, the principal.

With these views as to the effect and purpose of this legislation, we next inquire, was the road owned and constructed by the Alabama and Florida Railroad Company, extending from "Pensacola bay to the north line of the State leading in the direction of Montgomery, Alabama," a road to which this exemption attached, either by the act of January 6, 1855, or the act approved December 14, 1855, and the subsequent acceptance of the provisions of the act of January 6, 1855, by that company? It is very clear that this road is not embraced in the act of January 6, 1855. The State insists that no road not designated in the fourth section of the act of January 6, 1855, could have become entitled to the benefit of this exemption, and in support of that position calls our attention to the language used by this court in the case of the *Atlantic and Gulf Railroad Company* vs. *Allen*. 15 *Fla.*, 651. We there said: "The term 'roads' in this section (the 18th) refers strictly to the line of road for the construction of which the Internal Improvement Fund was created, and this line of road, a branch road from Live Oak to Lawton, was not embraced therein. To extend the exemption to other roads would be clearly inconsistent with the general purpose of the act, which was to encourage the system created by it, in which system the branch road was not embraced." This view, as applicable to the case then under consideration, was correct. There was no pretense that any act of the Legislature ever made or constituted the branch road from Live Oak to Lawton a proper improvement to be aided from the fund. The question in that case was whether that road, because it was at one time owned by a corporation owning the line of road from Tallahassee to Lake City, was exempt from taxation by virtue of the stock clause of the 18th section. We held not, and that the exemption belonged only to the roads

designated in the 4th section. We had in mind at the time nothing except the Internal Improvement Act. With that as the only law on the subject before us, what we said was correct. As the author of that opinion, however, I do not hesitate to say that the language, unless controlled in reference to the facts then in view, and the statutes being construed, was too broad and general. The points in that case were different from those in this. That cannot determine this. To the extent that what is there said covers the new questions here, viz.: the extent of the power of the Legislature in December, A. D. 1855, to designate another improvement and give it exemption, and the construction of the act of December 14, 1855, viewed in connection with the act of January 6, 1855, it is mere *obiter* and cannot control. The same is likewise true of the case of *Holland* vs. *The State*, 15 *Fla*, 529. We had there before us no other statute except the internal improvement act and the act incorporating the J., P- & M. R. R. Co.

Chapter 734 (laws,) is an act to facilitate the construction of the various lines of railroad provided for by the act entitled "an act to provide for and encourage a liberal system of internal improvements in this State," approved 6th January, 1855.

The 4th section of that act provides "that a line of railway to be constructed from the city of Pensacola, or any other point or points on the waters of Pensacola bay, or the waters of St. Andrews bay, to the north line of the State leading in the direction of Montgomery, Alabama, shall be considered as a proper improvement to be aided from the Internal Improvement Fund in the manner provided for, or may hereafter be provided for, in an act to provide for and encourage a liberal system of internal improvements in this State, approved January 6th, 1855."

Two questions arise here: What is the effect of this section, considered with reference to antecedent legislation, and did the Legislature have power to enact it, in view of the provisions of the antecedent Act of 1855? It is insisted that the aid which is derived under the exact terms of this act can come only from the Internal Improvement Fund, and this is true; but it is also true that a road by law entitled to avail itself of the aid extended to other roads for their construction becomes, like them, under the act of 1855, a part of the internal improvement system. The aid here granted was to be "in the manner provided for" in the Act of January 6, 1855, and this road, when it accepted the aid extended, must necessarily have placed itself, and did place itself, under the conditions upon which that aid

was extended in the act, as it accepted it as provided in the act.

The 4th section of the Act of 1855 did no more than designate the lines therein named "as proper improvements to be aided from the Internal Improvement Fund in manner as hereinafter provided." This made them a part of the system.

Granting the power of the Legislature (the view in which we are now considering the matter), we have here, within less than twelve months after the passage of the Act of January 6, 1855, another act designating this road "as a proper improvement to be aided from the Internal Improvement Fund, in the manner provided by the Act of January 6, 1855." If the one provision made a road a part of the system, how can it be that the other does not? Going back to the Constitution itself, it is clear that what was to constitute a particular work an improvement belonging to the system, was a legislative declaration that it was "a proper object of improvement."

It is said also that while this road may be entitled to aid from the Internal Improvement Fund under the Act of December, 1855, it is not entitled to exemption from taxation, as that is something different and distinct from such aid, and can result only from a clear grant by the State. This is true, and it is likewise true that the internal improvement Act of 1855 did no more than designate certain lines of road as proper improvements to be aided from that fund. The exemption of no road resulted *ex vi termini* from the internal improvement act. This being done as an inducement to the company or corporation having the right to construct roads belonging to the system, the 18th section of the act provided that the roads, &c., should be exempt upon the *company's accepting the provisions of this act.* The exemption resulted from two facts; first, being designated as a proper object of improvement; and, second, the acceptance by the corporation owning the road thus designated of the provisions of the act, and bringing itself under the rules of construction and other regulations of the act.

So in reference to this line of road. Under the act of December 14, 1855, it became a part of the system. It became a road within the language of the 18th section. That fact existing, upon the acceptance of the provisions of the act by the company having the right to construct the road, the right of exemption, during construction and thereafter for thirty-five years, enured as a right resting in contract, and as attached to the road as a road, and not simply because it was the property of one corporation or

another. These two acts are in *pari materia.* They concern the same subject matter.

The rule of construction, as announced repeatedly by this court, is that such statutes must be construed as one act. This being the rule, we cannot see how any other conclusion can be reached. The whole question is, did this road become a part of the system? If it did, then antecedent legislation as to roads embraced in the system, being in reference to the same subject-matter, become as much applicable to the road last made a part of the system as the one first made so.

The next question is, did the Legislature have power to enact this law? In this connection our attention has been called to the case of *The Internal Improvement Fund* vs. *Bailey,* 10 *Fla.,* 113. That case was decided in 1862, about eight years after the passage of the internal improvement act. The Legislature in January, 1861, passed an act to improve the navigation of a river, and directed the cost to be paid from the Internal Improvement Fund. A holder of bonds, before that time issued under the third section of the act, sought to enjoin such appropriation of the fund, and the court held that he was entitled to such injunction. The ground of its action was that the measure of the right of the holder of the bond was the act of 1855; that upon a sale of the bonds therein authorized rights became vested, a contract was brought into existence; that the terms of the law measured its obligation, and that the act, appropriating funds for the improvement of a river, was a violation of the contract, in that it diverted a portion of the funds pledged for the payment of the bond contrary to the terms of the law.

If it be admitted that all of this is true, and we think it is, it does not follow here that the act of December, 1855, was in violation of any right of a bondholder. For while in 1861 it does appear from this case that there was a bondholder, *non constat,* but that there was none in December, 1855, the date of the act here in question. That case is authority for the position that an antecedent bondholder can set aside or enjoin an appropriation of the fund for any purpose to which it was not applicable at the time that his right as a bondholder attached. That was the true question in the case. The equity of the bondholder, the *cestui que trust,* was held effective to restrain and limit the power of the trustee to the terms of the law as it was when his right accrued and when the obligation of his contract attached. But the present case is here upon a demurrer to a bill. Nowhere in the bill is the existence of a bondholder at any time stated. This, as a matter of

course, is a fact of which we cannot take judicial notice, even if it existed at the date named, and if it be any defense of this officer to set it up, he must do so by way of answer. It does not appear from the bill. In what way, however, the equity of a bondholder can be made effective by the State in this matter we cannot see. That, however, is not a question before us at this time.

In the discussion of the case of the *Trustees of the Internal Improvement Fund* vs. *William Bailey*, 10 *Fla.*, 125, the court, while admitting the power of the Legislature to designate more objects of improvement than were designated in the 4th section, remarked that "the General Assembly took a wise view of the Constitution, and, therefore, designated in the beginning only a few grand objects, vital to the whole State for improvement, leaving others to wait their share of State aid until those first inaugurated should have passed successfully through the fiery ordeal of their difficult and doubtful struggle into existence." After naming what the objects designated by the Act of 1855 were, the court again says: "After these roads should be built and prove a success, by being able for five consecutive years to pay six per cent. on the capital stock paid in and the interest on the bonded debt, and one per cent. yearly on a sinking fund on said debt, then, as provided by section 27, the Trustees of the Internal Improvement Fund may apply, under the direction of the Legislature, the annual income arising from said fund to other purposes of internal improvement, &c. So it will be seen *that it was not the design to absorb the whole fund* in aiding the designated improvements to the exclusion of all others, but only to postpone all others until those first designated should have been put into successful operation. This, we clearly think, the General Assembly had a right to do."

We have inserted this language of the court in full in order that the effect given to the 27th section of this act by it in that decision may be clearly seen. The court here simply say that the Legislature had the right to designate some objects of improvement to be constructed first, and to postpone others. While this may be true of this Legislature, it is also true of a subsequent Legislature that its powers were not limited by the powers of the first, unless the act of the first was of such character as called into operation a constitutional limitation, and something more than a simple antecedent exercise of legislative power stood in the way of the exercise of the powers of the subsequent one. The Internal Improvement Act is not organic law, and the power of one Legislature is no greater than

another. Where the power of the subsequent one is limited, it results from the fact that the act of the first is of such character that the organic law renders it inviolable through constitutional limitations covering the subject. It may be true, as to this 27th section, that such portion of it as provides that the fund shall pay deficiencies in the interest account is a contract, when viewed in reference to a bondholder. This was, perhaps, a part of the contract with him, as it was defined by this court in the case of the *Trustees of the Internal Improvement Fund* vs. *Bailey*, but we cannot see that such is the case with the remainder of the section, whether viewed in reference to the State, to the Trustees, to the companies, or the bondholders. This section is nothing more than a legislative declaration as to what the Trustees shall do under the direction of a subsequent Legislature, in the event the railroad companies pay for five years six per cent. on the capital stock, the interest on the bonded debt, and the sinking fund. The provision that the *railroad companies indicated by the Internal Improvement Act* shall for five years pay six per cent. on their capital stock, before the annual income arising from the fund is to be applied to some other purpose, if a contract, is a contract with the companies or the stockholders. We are not prepared to say, and cannot say, that it was within the power of that Legislature to agree with the stockholders of every private corporation embraced in this system that nothing further should be done with the Internal Improvement Fund than was provided in that act until *the stock of each stockholder in these corporations should yield him six per cent.* This Legislature could not make the exercise of the constitutional functions and powers of a subsequent Legislature in reference to the great public trusts attached to these grants conditional upon the fact that the private investment of A., B., or C. should yield him one, two or six per cent. This Legislature, notwithstanding the constitutional limitation as to pledging the *faith and credit of the State*, might, in consideration of a company agreeing to construct a road a part of the system, pledge to the holders of the bonds of the company a part of the public domain applicable to such purpose, and such legislation may be had as to attach to such a grant a constitutional limitation, but one Legislature cannot agree with a stockholder in a railroad company, that unless his stock yields him six per cent. a subsequent Legislature shall not discharge its constitutional legislative duties as to lands which the State holds by virtue of grants from the Federal Government. It might just as well attempt in the charter of a corporation to contract that unless the stock yielded an income of six per cent.

a future Legislature should not have power to establish rules of property or to perform the usual functions appertaining to the legislative branch of the government. The legislative power of the State was in this Legislature for the time fixed as the term of office of the persons belonging to that department of the government. The Constitution provided that after that time this legislative power should be in other persons, and this Legislature could pass no law in derogation of this constitutional grant of power to Legislatures following.

In discussing this subject we must recollect the distinction between legislation, which, under the Constitution, amounts to a contract, such as grants of exemption from taxation based upon a consideration. These have been held by the Supreme Court of the United States to be matters lying in grant—things as to which a contract may attach. But the power of the Legislature in reference to an acknowledged continuing public trust and power cannot be limited by accidental circumstances based upon the amount of gain realized from private investments. 17 *Geo.*, 56; 7 *Conn.*, 585; 5 *Conn.*, 538; *Cooley's Con. Lim.*, 125–27.

We conclude from what has been said that upon the face of the bill in this case this road was a part of the internal improvement system. That an exemption from taxation resting in contract is annexed, by the terms of the law which created it, to the *road itself and not to the companies*, and that there is nothing on the face of the bill from which the existence of any bond, bondholder, or other thing preventing the power of amendment in the Legislature in December, 1855. In other words, in this bill as demurred to, we can see nothing from which any limitation upon the power of the Legislature of December, 1855, is to be inferred. No limitation as to antecedent contracts operating at the time, so far as this bill discloses, we think the power was clear. While remarking this, we wish it to be understood that we say nothing as to its legal effect, if the then existence of a bondholder is alleged and proved by this officer in his answer.

The next point we notice is that the Pensacola & Louisville Railroad Company is not entitled to this exemption.

The bill alleges that the road was sold under a first mortgage, and that it was purchased by the Pensacola & Louisville Railroad Company. The charter of the A. & F. Company gave it authority to borrow money to carry into effect the objects of the act, and to pledge the property of the company for the payment of the same. This gives the power to execute a mortgage of the road, its fixtures, and all the property named in the 18th section of the internal

improvement act. 11 *Ala.*, 437 ; 10 *Ohio*, 372 ; 28 *Ala.*, 321 ; 3 *Md.*, 305 ; 3 *Dutcher*, 221 ; 1 *H. & M.*, 726 ; 2 *Red. on Railways*, § 235.

A sale under such a mortgage, therefore, passed the property if the purchaser had the right to purchase. The purchaser, the Pensacola & Louisville Railroad Company, under its charter, had the right to purchase this property, as it was the line of road that it was authorized to construct and operate, and with reference to which it was invested with the general power to purchase. This road thus having acquired the property, the Legislature in 1872 recognized that it had become "the assignee of the Florida & Alabama Railroad, and the franchises of the said corporation," and that it was in possession of and operating the said line of road. The Legislature also gave it the express power to purchase any other railroad This company, under its charter, had the power to borrow money and to pledge the property of the company for its payment. So far as the right of complainant here is concerned, it is based upon the allegation of the fact "that he is the owner of the equity of redemption of the said Pensacola and Louisville Railroad Company, as well as of all the other property levied upon and advertised for sale by the collector of revenue." In addition to this he alleges that he is "the owner and holder of 532 of the 600 bonds of $1,000 each, to secure which said Pensacola and Louisville Railroad, and all the above mentioned property, as well as its rights, privileges and franchises, are now under mortgage." These facts are admitted by the demurrer.

This bill states enough to show and trace a right to this property in the complainant. It shows, at any rate, such an interest as gives him standing in a court of equity to enjoin the collection of a void tax. It is not material to inquire here whether in any of these sales the franchise to be a corporation, or the franchise to operate the road and collect tolls, which are usually held to be appurtenant to the shares, passed to the vendee. The property passed, and with it, as an incident, went the exemption.

While we have examined this question of title in this case, yet we do so in the absence of any point being made in reference thereto, and because in any event our conclusion is the same. We are inclined to the view that, upon an allegation of title based upon a judicial decree in a proceeding like this in equity, we should not in this collateral way examine the basis of such decree, or review the questions which the court necessarily passed upon in the exercise to its jurisdiction, nor is this any way to try

a right to franchises. We are also inclined to the view that the officer here having advertised this property for sale as the property of the Pensacola and Louisville Company, is estopped from alleging that it is not its property in this contest. The officer advertises it as the property of the Pensacola and Louisville Company. Such a levy upon property in the possession of A, as the property of A, cannot be defended by alleging that it is the property of B.

The decree is affirmed.

Appendix I.

GONZALEZ *v.* SULLIVAN, 16 FLA., AT 827.

In response to a petition, Mr. Justice Westcott delivered the following opinion denying a rehearing at the June Term, A. D. 1878:

We have examined the petition for a rehearing in this suit. The first position taken is that the 4th section of chapter 610, the Internal Improvement Law, has no efficacy in granting any immunity from taxation, except to explain what roads are referred to by the term roads in the 18th section of said act. With this view the court does not differ. As a matter of course, the Legislature could then only refer to existing legislation, but what were its subsequent powers? The conclusion of the court was that subsequent legislation in terms relating to the same subject-matter gave this road the same rights that other roads had by being embraced in the 4th section. That this legislation made it a part of the system by precisely the same method as the prior legislation made the roads named in the 4th section a part of the system, and that being a part of the system, and accepting the provisions of the act, the immunities of the 18th section followed. Whether a canal designated by the 4th section, and not mentioned in the 18th section, is or is not exempted is a question, the relation of which to the matter here involved we do not see. If such canal is not exempted, it is simply because the exemption is granted to roads and not canals. This in no way affects the question whether the Legislature has not, by subsequent legislation, given this road the standing that other roads had under the 4th section—in other words, made it a part of the system.

The language of the act is restricted, it is contended, to aid from the Internal Improvement Fund. This is true. So is the language of the 4th section of chapter 610 so restricted. The conclusion of the court is that, in view of the language of the Constitution and of the Legislature in the 4th section of chapter 610, the designation of certain roads to be aided from the Internal Improvement Fund constituted them a part of a system, and that companies constructing such lines of road, or were designated proper improvements to be aided from the fund, could, upon the acceptance of the provisions of the act, become entitled to the exemptions specified as to their road. Now it cannot be denied that a road became a part of the system if it was

entitled to the benefits of the fund, and became, by virtue of its authorized acceptance of the provisions of the act, subject to the regulations of the system. This road was designated a proper object of aid from the Internal Improvement Fund in the manner provided for in the Act of 1855. Looking to that act (section 5), one of the conditions upon which the aid was to be granted was a full acceptance of its provisions. This the road has done, and we cannot see how we are to hold that it does not accept and become entitled to this exemption when the 18th section provides expressly that the capital stock of any company accepting the provisions of this act, and the roads, shall be exempt unless the general rule of construction which has controlled us, viz.: that acts in *pari materia* must be construed together, is erroneous, or we have made an erroneous application of it.

We understand this to be the rule as to all statutes, whether penal, remedial, or of any other character. True, the degree of strictness to be observed in their construction, looking to the liberty of the citizen on the one hand and the enforcement of his civil rights on the other, is different. It is very evident that two statutes relating to the same subject cannot be construed separately.

We have given this subject all the attention we can. Our views expressed in the opinion in this case are the result of careful examination, and we cannot contemplate a change without doing violence to the rules of law which in our judgment control the subject.

A rehearing is denied.

FILED
NOV 3 1883
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States,

October Term, 1883.

No. 765.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY
PLAINTIFF IN ERROR.

VS:

MANUEL PALMES, *COLLECTOR OF REVENUE*, FOR THE STATE OF FLORIDA AND FOR THE COUNTY OF ESCAMBIA, IN AND FOR ESCAMBIA COUNTY.

BRIEF FOR DEFENDANT.

E. A. PERRY, *of Counsel*
FOR THE STATE OF FLORIDA.

Supreme Court,
OF THE
UNITED STATES,
October Term, 1883.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY:
PLAINTIFF IN ERROR.
VS:
MANUEL PALMES, *Collector of Revenue,* FOR THE STATE OF FLORIDA, AND ESCAMBIA COUNTY.
NUMBER 765.

—0—

THIS case is here upon the claim of the Plaintiff, that the People of Florida, by their Constitution of 1868, and the Legislature of said State, by the Revenue Laws passed in obedience thereto, have violated so much of the Constitution of the United States as prohibits a State from passing any law impairing the obligation of contracts. The following are the provisions of the Constitution thus assailed:—

SECTION 1, Article XII, of the Constitution of 1868, is as follows:

"The Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes."

SECTION 24, Article XVI, of the same Constitution, was as follows:

"The property of all Corporations, whether heretofore or hereafter incorporated, shall be subject to taxation, unless such Corporation be for religious, educational, or charitable purposes."

Which in 1875, was amended to read as follows:

"The property of all Corporations, whether heretofore or hereafter incorporated, shall be subject to taxation, unless such property be held and used exclusively, for religious, educational, or charitable purposes."

In conformity with such provisions of the Constitution, the Legislature of Florida have framed the Revenue laws of the State, since 1868, under which the property of all Railroad Corporations has been taxed like other property.

Several Corporations (of which the Plaintiff is one,) operating

railroads in the State, claim, that by such Constitutional provisions and legislation, and taxation thereunder, the State's obligation, under what they allege to have been contracts made under the old Constitution of the State, is impaired. Such Corporations, with probably two exceptions, basing their claim of contract exemption from the taxes imposed upon other railroads and property in the State, upon the 18th section of the Act of the General Assembly of Florida, approved January 6th, 1855.

———0———

[I.] The people of Florida, in 1868, in adopting their new Constitution, denied, and the State now denies, that any legislative special exemption from taxation, under the old Constitution, did or could constitute a contract binding upon the people of the State, because of Constitutional restrictions and limitations upon the subject of taxation contained in that Constitution.

If this proposition can be sustained, it at once justifies the action of the people, in incorporating into their present Constitution the articles above copied—settles all controversies pending between the State and such Railroad Corporations as claim as contracts, prior legislative attempts, by discriminating special exemptions, to relieve certain privileged Corporations, or certain privileged property in certain parts of the State, from the same burdens as were imposed upon all other Corporations and property of the same class and kind, throughout all other portions of the State. This point is raised by the answer, (Record p. 12,) and is of the most vital importance to the State.

Section 1, Article VIII, of the old Constitution of Florida, in force from the time Florida became a State in 1845, till the State's re-organization in 1868, was as follows :

"The General Assembly shall devise and adopt a system of Revenue, having regard to an equal and uniform mode of taxation, to be general throughout the State."

Thompson's Dig. p. 86

The people of Florida insist that by this Article they restricted and limited the most important power intrusted by them to their agents, the General Assembly,—that is, the power of legislating upon the subject of taxation. They ordained that this power, should be exercised, *and exercised only*, by the adoption of a "system," which system was to be "general throughout the State," and was to secure, as nearly as possible, an "equal and uniform" imposition of the burdens of taxation.

The purpose of the people is clearly indicated in this, and the General Assembly was inhibited from any act tending to frustrate or disappoint that purpose.

"When a Statute" (or Constitution) "limits a thing to be done in a particular mode, it includes a negative of any other mode."

Raleigh & Gaston R. R. Co., *vs.* Reid.
13, Wal. 269-70.

Mr. Dwarris, in his work on Statutes and Constitutions, treating of limitations and restrictions of the power of Legislatures, says, quoting from Denio, C. J., in the People vs Draper, 15 N. Y. 532, 543-4:

"I do not mean that the power must be expressly inhibited, for there are but few positive restraints upon the legislative power contained in the instrument." "Every positive direction contains an implication against anything contrary to it, or, which would frustrate or disappoint the purpose of that provision."

Potter's Dwarris on Statutes, p 64.

Here then was a positive direction, with a clear, unmistakable implication against any power in the General Assembly, holding under that Constitution, to impose upon, or exempt from the burdens of taxation, any corporation, individual or property, except, conformably to a general "system of revenue," "equal and uniform" in its operation, and co-extensive with the State.

The term "system" in itself implies uniformity, order, rule, harmony. By what kind of a system, could the General Assembly discriminatively exempt one, and tax another Corporation of the same kind?

The Supreme Court of Florida, in a decision, which meets the entire approval of the profession in the State, in construing a Constitutional limitation, strictly analogous to this--a provision in the present Constitution of Florida—that,

"The Legislature, shall establish a uniform system of county, township and municipal government,"

defines "system" thus:—

"Its general signification is plan, arrangement, method, and when used in reference to municipal government, it means simply rules and regulations for the organization and government of municipal corporations."

"Substituting this definition for the word as used in the Constitution, the mandate to the Legislature is that it shall establish uniform rules and regulations, for the government of municipal corporations."

McConihe vs McMurray, 17 Fla., 238, 269.

In the same case, that learned Court very satisfactorily defines the word *uniform*, quoting from decisions of other Courts construing the word as used in Constitutional limitations upon the power of taxation, and adopting the constructions thus given.

For instance:

"The Constitution of California provided 'that taxation shall be equal and uniform.' In speaking of the power of the Legislature under this clause the Supreme Court of that State says, 'it cannot discriminate between persons, or grant an indulgence to one which it does not grant to another standing in the same relation. (35 Cal. 616.)"

Again:

"The Constitution of Louisiana, provided, 'that taxation shall be equal and uniform throughout the State.' The Supreme Court of that State held that it would preclude a discrimination as between those carrying on the same business, but permitted like taxation upon all persons in the same trade or calling."

p. 266.

Again:—

Quoting from 17 Cal. 554: "That Court held, that a general law of uniform opera-

tion was such a law as bore equally in its burdens and benefits upon persons standing in the same category."

p. 267

"Uniformity," says the Supreme Court of Florida, "indicates consistency, resemblance, sameness, a conformity to one pattern."

ib. 270.)

Applying these definitions, it would seem that the General Assembly should have had but little difficulty in understanding the mandate of its principal, the People of Florida; and for half a score of years, the General Assemblies not only did understand, but seemed to have most faithfully carried out the purpose of the people to be taxed by a general system, equal and uniform in its operation throughout the State.

The first General Assembly in 1845, among its first acts organizing the State government, devised and adopted just such a general system, imposing the burdens equally and uniformly, and exempting none, except by like general system, equal and uniform in its operation, throughout the State.

Laws of Florida, chap. 10, Acts First General Assembly, of the State of Florida. p. 21.

Thomp. Dig. 86.

And, with the exception of such special exemptions as by some means were procured by several influential corporations about the year 1855—the legislation of Florida under the old constitution shows a strict adherence to the constitutional direction and limitation upon the subject of taxation; it shows that, with such special exceptions, all corporations, like all individuals, have been taxed or exempted from taxation by a general, equal and uniform system or rule.

It is not contended, as would seem from the argument of the Supreme Court of Florida (Record p. 29 et seq.) that the provision of the old constitution under consideration, absolutely precluded the General Assembly from exempting property, persons or corporations, provided such exemptions were by a system equal and uniform in its operation and general throughout the State; *not discriminating between persons, property or corporations of the same character, and not granting to one an indulgence, which it does not grant to another in the same category.*

The General Assemby might have devised and adopted a system which exempted railroad companies and their property, either in whole or in part; but it had no constitutional power to tax one, exempt another in part and still another altogether.

The language of this Court in Gilman vs the City of Sheboygan, 2 Black 510, and State Railroad Tax Cases 2 Otto 612, though the Court was considering constitutional provisions less comprehensive than that of the old Florida constitution, is in a great measure applicable here.

It is impossible to conceive how a positive requirement that legis-

lation pertaining to the raising of a revenue shall be by a general uniform system and rule, can leave to the Legislature power to exempt from taxation, except by a like general and uniform system and rule.

Would not the exercise of such power entirely deform the system and frustrate and disappoint the purpose of the requirement?

The purposes of this limitation of legislative power are manifest: It secured an individual tax payer from being taxed at a higher rate than his competitors in the same trade or calling, and at the same time secured such competitors from the inequality arising from taxing them and exempting him.

Had the General Assembly of 1855 enacted that A. a merchant, should pay 3 per cent. tax while other merchants, under the system of revenue were required to pay only 1 per cent. would the courts have hesitated to declare such legislation void? Is the principle any different when applied to an enactment, declaring that A. shall not be taxed, while under the system all other merchants continue to be taxed?

If the enactment in one case, could not impose upon A a legal obligation to pay the excessive tax, how could it in the other case impose upon the people of the State an obligation not to tax him at all?

The people, wiser than their General Assembly of 1855, foresaw that not only common justice, but the development and interests of the whole State, would be best attained and internal improvements best encouraged, by placing all railroad enterprises, as well as all engaged in other industries, upon equal footing, so far as liability to taxation was concerned; thus securing a fair competition, one with another of the same character or class.

As has been said by this Court (Tappan vs Merchant's National Bank, 19 Wal. 504), "Absolute equality in taxation can never be attained. That system is the best which comes the nearest to it."

The people of Florida, in framing their constitution, recognized this, and consequently did not exact of their General Assembly absolute equality; but did limit them to such a system as approached, if not nearest to it, at least in the direction of it, and inhibited legislation directly violative of equality, uniformity and general system.

But it is argued that the roads claiming exemption under the 18th section of the act of 1855 were constituted a different class, and thus that a different rule of taxation might be applied to them.

That the General Assembly had constitutional power to select out of all the internal improvements, which corporate and individual enterprise had inaugurated or contemplated, the roads of a few pet companies upon which might be lavished the munificent appropriations by Congress, which made up the the internal improvement fund, may be true.

Whether it lay in the power of that General Assembly, under the

provision of the constitution as to taxation, by the exercise of arbitrary will, to make out of taxpayers, which were in fact of the same class, different classes, is questionable.

It was the duty of the General Assembly to encourage commerce and trade as well as internal improvements. That body, having been led to believe that that duty could best be discharged by helping to build up a favorite town in the State, enact that any merchant trading in such town shall be exempt from the taxation imposed upon all other merchants. Would such enactment, though induced by such motive of public policy, be a legitimate classification of the merchants of Florida—so as to authorize a different rate of taxation under the rules as exemplified by the courts of the country and by this Court in the cases cited above?

If it be admitted that the power to thus classify existed, and that such was the intention of the General Assembly, then does this 18th section bear upon its face the brand of invalidity; as it was left to chance or the option of any one company to deform the system in its application to the new class.

Apply here the reasoning, and, with some change of terms, the language of the Supreme Court of Florida in McConihe vs McMurray cited above.

> Did the act create a distinct class of railroads, comprising such as were to be aided from the internal improvement fund, it would be a general law of uniform operation, but such is not the case. The local option authorized, makes it a matter of discretion with all the roads embraced in that act, to remain in such distinct class, subject to the distinct system of revenue applicable to that class, or not. In the event all such companies should accept the act, the system of revenue prescribed for them might have uniform operation in that class. That uniform operation however, would be the result of chance and not of the operation of a fixed rule prescribed by the General Assembly, while the Constitution contemplated no such contingency.
>
> The system of revenue in each class *must be the same*, and such must be the result of the action of the General Assembly independent of the contingency of local discretion or option in the premises. The General Assembly must itself, independent of acceptance by the different companies, have so framed its enactment that there could be no dissimilarity of revenue regulations applicable to the class.
>
> Compare 17 Florida, 268.

But it is argued (Record p. 32) that because the constitution made it the duty of the General Assembly to provide for a suitable application of such funds as may be appropriated for such improvements, the roads were

> "so far public in their nature as under the Constitution to be the beneficial object of an appropriation of public funds. An exemption from taxation was a very proper method of encouragement. It was but an indirect method of appropriating for the benefit of this road an amount of public moneys equal to the amount of its taxes, and this power no one can, with reason, deny."

With great respect for the high source whence this proposition emanates, I am constrained to say, that the people of Florida do, as it is believed with good reason, deny the right of the General Assembly, in 1855, either directly or indirectly to appropriate, for the benefit of any railroad corporation or railroad, one farthing of

the "public moneys" arising from the State's revenue.

Section 2, of Article XI of the constitution, contemplated no funds arising from taxation, but funds such as arose from appropriations by Congress of lands and the proceeds of their sale; which were not and could never become public moneys of the State, but were held by the State in trust, as trust funds; the proper execution of which trust and application of which funds, was the purpose of section 2, article XI, and should have been the scope and limit of the act of January 6, 1855. Section 18 of that act is entirely alien to that purpose and outside of such limit ; and, beside being repugnant to the provision of the constitution relating to revenue before quoted, is in so far as it attempts to appropriate either indirectly or directly for the benefit of those companies or roads an amount of the State's public moneys or revenue equal to the amount of their taxes under a constitutional system of revenue, directly violative of another constitutional limitation then in force, which restricted the use of public moneys or State's revenue to the necessary expenses of government.

Sec. 2, Article VIII of the Constitution then in force was as follows :

"No other or greater amount of tax or revenue shall at any time be levied, than may be required for the necessary expenses of government."

Thompson's Dig. 86.

Inasmuch as under this restriction the taxing power could not be *used* for the purpose of encouraging or aiding internal improvements, how could it be *sold* for such purpose?

———0———

[**II.**] If, notwithstanding such restrictions and limitations of its power, in matter of revenue and taxation, the General Assembly could have bartered away irrevocably, the right to tax those corporations, it did not do so, by the 18th section of the Act of January 6th, 1855.

Some years prior to that Act, the charter contracts between the State of Florida and the corporations were made. The charter contract between the State and the Alabama and Florida Railroad Company, under which this plaintiff claims, was made January 8th, 1853. (Record page 1).

This Court long since settled as the law of this country that such charter, if constitutionally made, is a contract, the State's obligation under which cannot be impaired by subsequent legislation. The consideration necessary to sustain the State's grant of the franchise, privileges and immunities therein expressed being the obligation on the part of the corporation to build and operate the road in such manner as to meet the public requirements.

The existence of a complete charter contract of date as alleged in Plaintiff's bill being admitted, the question is: does that contract embrace any pledge or stipulation of exemption from taxation ?

"This question is to be answered by the charter itself."

Providence Bank, vs Billings—4 Peters 560.

"Any privileges which may exempt it from the burdens common to individuals do not flow necessarily from the charter, but must be expressed in it, or they do not exist." (ib. 562.)

To the charter alone and to amendments thereof, for sufficient consideration, constitutionally made, we must look, not only for the powers, rights and franchises, but for all special privileges and immunities of the corporation. To use this court's language:—

"Its powers and immunities depend primarily upon the law of its creation.—Beyond that, it is subject, like individuals, to the will of the law making power."

Fertilizing Co., vs Hyde Park, 97 U. S. Rep. 667.

Is it not true as stated by Cooley C. J. that all the decisions of this Court, upholding exemptions of corporations from taxation, as contracts, rest upon the doctrine that their charters are contracts?

East Saginaw Manufacturing Co., vs City of Saginaw,
19 Mich. 259, 282—3. same case 13 Wal. 373—6.

The charter of the Alabama & Florida Railroad Company, contains no such stipulation, no mention of taxation or exemption. The bill (Record p. 2) alleges that by acts subsequent to such charter, the 18th section of the act of January 6th, 1855, and the 4th section of the act of Dec. 4th, 1855, this immunity claimed was granted.

To sustain the claim that such immunity rested in contract such as this court will protect, it must be shown that such subsequent legislation of 1855, for a sufficient consideration, incorporated such immunity into the contract; which could only have been done by amendment, or alteration of the original charter or contract, made in a manner not inhibited by the constitution then in force.

To take from, or add to the contract there must be an amendment or alteration of the charter. This subsequent legislation cannot be construed to be such amendment, or alteration. If not, and if it had any force, it was not the force of contract, but was *"subject to the will of the law making power;"* was a privilege, a bounty or gratuity, subject at any time to be revoked, and its revocation by the people in their constitution of 1868 does not contravene any part of the constitution of the United States.

The people of Florida, in the first organization of their State in 1845, mindful of the binding force of private charters and of the danger that their representatives might, by incautiously granting or amending or altering such charters, irremediably prejudice them and their posterity; and understanding "that the people of the State may by the form of government they adopt, confer on their public servants and representatives, all the powers and rights of sovereignty, which they themselves possess; or may restrict them within such limits, as may be deemed best and safest for the public interest," (Ohio Life & Trust Co. vs. Debolt—16 How—429); and recognizing that "If there be no constitutional restraint on the action of the Legislature, on this subject, there is no remedy, except through the influ-

ence of a wise public sentiment, reaching and controlling the conduct of the law making power," (Wilmington Railroad vs. Ried, 13 Wal. 267,) wisely incorporated in their Constitution, such restraints as would enable the influence of public sentiment to reach the General Assembly and be felt, for or against the making of any such contract, before the same could be irrevocably fastened upon the State.

Thus they ordained, section 2 article XIII:—

"The General Assembly shall pass no act of fncorporation, or make any alteration therein, unless with the assent of at least two-thirds of each House, and unless public notice, in one or more newspapers in the State, shall have been given, for at least three months immediately preceding the session at which the same may be applied for."

Thompson's Digest 268.

If, in the acts of 1855, they were designated as amendments, or alterations of the charters of the several corporations, it might be presumed, that the constitutional requirements to constitute them such, had been complied with.

In the absence of any such indication of their character, the Court will not, especially, for the purpose of building up a contract, such as is here claimed, assume that they possess such character; and unless it be found that the requirements of the constitution necessary to give them such character, were complied with, it is clear, that it was not the intention of the General Assembly that the acts should constitute parts of the several charter contracts. And whatever may have been the intention, it is equally clear, that the General Assembly was positively inhibited from so altering and adding to the contracts, as to attach to them the immunity from taxation, by legislation passed otherwise than in accordance with this provision of the Constitution.

These acts being public statutes, it is competent for the Court upon which is imposed the burden of deciding what the legislative body did do, when it is in dispute, to resort, if necessary, to the written record which that body made of its proceedings.

Gardener vs. The Collector 6 Wal—499—510.

And all presumptions being against the claim that these acts constitute parts of the contract binding the State, (Tucker vs. Ferguson 22 Wal. 527) unless it appears affirmatively, that such was the intention, and that such intention was executed in the manner required by the constitution—a doubt arises, and "that doubt must be solved in favor of the State."

The Delaware Railroad Tax—18 Wal. 206—226

The Supreme Court of Florida having, in the exercise of such power, found that section 2 of article XIII, was not complied with, (Record p. 28), and that the acts of 1855 were unconstitutional, so far as they purport to amend the charters of the several corporations, looking only to section 2 of article XIII, hold that the acts are constitutional so far as this matter is concerned, by reason of section 2 of article XI of the same Constitution, which is as follows:—

"A liberal system of internal improvements being essential to the developement of the resources of the country, shall be encouraged by the Government of this State, and it shall be the duty of the General Assembly, as soon as practicable, to ascertain by law, proper objects of improvement in relation to roads, canals and navigable streams, and to provide for a suitable application of such funds as may be appropriated for such improvements."

Thompson's Digest 111.

When the constitution was adopted, the people of Florida had reason to expect appropriations by congress, for the benefit of internal improvements in the State.

Hence, they directed generally the Government of the State to encourage internal improvements, but to their General Assembly they gave specific direction how the anticipated trust should be executed, that is, by (as soon as it could practicably be done,) ascertaining proper improvements relating to roads, canals and streams, and by providing for a suitable application of such appropriations or trust fund.

As before shown, this did not refer to, or authorize any appropriation of any part of the State's funds to aid or encourage internal improvements or any expenditure, in the matter on the part of the State, other than the necessary expenses of the government, incidental to the execution of the trust.

Where in this is found authority to the General Assembly to override all other restrictions and limitations of legislative power, contained in that Constitution?

This provision distinctly marks out what the General Assembly should do to encourage internal improvements and construed by the ordinary rules and the maxim *expressio unius est exclusio alterius*, it might be considered in itself, as a limitation to a particular mode which negatived any other.

If the expression of the means to be adopted, (which means are in no respect inconsistent with any other part of the Constitution,) does not exclude all other means, it most clearly does exclude all such other means, as are by other parts of the Constitution prohibited.

Admit it to have been proper, even necessary, for the General Assembly in providing for a suitable application of the trust funds, to "pass acts of incorporation or make alterations therein," if so, the Constitution limited how such proper or necessary means should be accomplished. Where the necessity of disregarding such limitation ?

If to encourage internal improvements, it was necessary to alter or add to the charters of the companies, was it any more difficult to procure that required notices should have been given, than to procure that the amendments and alterations made to their charters should be accepted by the companies ?

Such notices might have been given by the General Assembly or by its Committee on Internal Improvements, to whom had been entrusted this matter.

If "not intended that the State was to be thus limited in its powers by the discretion of corporations" the General Assembly certainly dis-

regarded the intention ; for the legislation of 1855 was thus limited and entirely dependant upon the discretion of corporations ; for its taking effect depended upon their acceptance.

If to encourage internal improvements by a proper application of these funds, justified the General Assembly in disregarding the limitations as to taxation and as to making charter contracts, why would not such end justify the taking of private property without just compensation, the denying to a citizen the right of trial by jury in cases against those companies selected as beneficiaries of the trust fund, in short, the disregard of all of the Constitutional restraints intended to secure the rights of the people ?

It is argued that the validity of bonds issued by some of the companies and termed internal improvement bonds, have been generally recognized. As to that, it is suggested that neither the State or any party other than the companies that issued them, have ever had any interest in questioning their validity, and from doing this the companies were estopped ; thus it does not seem strange that they have been recognized as valid.

It might indeed be held, if any question were raised as to the validity of any part of the acts of 1855, other than section 18, (which is the only section that can be considered as affecting substantially any of the rights of the people,) that, by acquiescence if not otherwise, the people and the State had affirmed the unauthorized action of their agents.

But there can be no such claim as to section 18 or any other attempt at special exemption from taxation; for all such attempts on the part of their representatives were solemnly disaffirmed at the first opportunity, by their Constitution of 1868 and the amendment of 1875, and continuously since.

In fact, the people of Florida, in the same convention, in which they disaffirmed section 18, affirmed and ratified the other sections of the acts of 1855—for in section 2 of Article XV of the Constitution of 1868, they ordained,

"That all acts and resolutions of the General Assembly, and all official acts of the civil officers of the State, not inconsistent with the provisions of the Constitution and Statutes of the United States, or with this Constitution, or with any ordinance or resolution adopted by this convention, and which have not been, and are not by this Constitution annulled, are in force, and shall be considered, and esteemed as the laws of the State, until such acts or resolutions shall be repealed by the Legislature of the State or this Convention."

Did not the people of Florida by Section 13, Article XIII of their old constitution (Record p. 27) deny to their "public servants and representatives" the power to make any irrepealable contract in aid of any corporation whatsoever?

In the contract before this Court in the Maryland Bank cases, the language used to bind the State was—"the faith of the State is hereby pledged not to impose any further tax"—

Gordon vs Appeal Tax Court, 3 Howard, 134.

Does not every contract by legislation, involve the pledging the faith of the State?

Under this section had the General Assembly any power to contract or pledge the faith of the State, that the companies accepting the provisions of the act of 1855—should not be taxed for thirty-five years, or at any time, when the public interests demanded that they should be taxed ?

To protect a contract it is first necessary to find one.

This Court is called on to protect from being impaired the "obligation" imposed upon the State by section 18.

To enable it to do that, it must know what that obligation is.

This Court has laid down the rule by which to determine whether any, and if so, what obligation was fastened upon the State in the legislative efforts to grant special exemptions.

"The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts and forming a part of them as the measure of the obligation to perform them by the one party and the right acquired by the other."

Mc Cracken vs Hayward, 2 How. 612.

This Court again say:

"The obligation of a contract is the law which binds the parties to perform their agreement. The law, then, which has this binding obligation, must govern and control the contract in every shape in which it is intended to bear upon it, whether it affects its validity, construction or discharge.

Washington J. in Ogden vs Saunders 12 Wheat. 257.

To ascertain what, if any, obligation was by sec. 18 imposed upon the State the Court must look to the Constitution then in force, and to that Constitution alone, unless prior to 1855 there had been a construction of such Constitution by the highest court in the State. In that event such construction would have formed a part of the obligation and as such would probably be held as binding upon this Court. Not so however any construction by the State Court, made since the date of section 18, and especially not the opinion of that learned Court in the case at bar, (6 Wal. 628) which is believed to be the only case in which that Court has considered the question of the constitutional validity of said section or of any special exemption from taxation the under old Constitution.

As it is claimed by the companies, that the alleged contracts were made, not by the principal, but by agents, the first inquiry naturally is, whether the agents had power under their mandate to bind their principal.

In this case, brought here under the 25th section of the Judiciary act, it cannot be questioned that this Court will determine for itself, the construction and effect of the two constitutions and the legislation of Florida brought under review, without reference to the opinion of the Supreme Court of the State upon the subject.

Butz vs City of Muscatine 8 Wal 575—582

Jefferson Branch Bank vs Skelley 1 Black 436—442—3.

Gelpcke vs City of Dubuque 1 Wal. 175–206.
Township of Pine Grove, vs Talcott 19 Wal. 666–678.
Provident Institution, vs Massachusetts 6 Wal–611–628–630.

To support plaintiff's claim it necessarily arrays a section of a statute against two Constitutions and all the presumptions. In this situation the ordinary disinclination of the Court to hold a legislative act *ultra vires* is reversed, and it will require a conviction clear of the shadow of a doubt to sustain section 18.

"The rule of construction in this class of cases is that it shall be most strongly against the corporation.

Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded but what is given in unmistakable terms or by an implication equally clear. The affirmative must be shown. Silence is negation, and doubt is fatal to the claim.

This doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this court."

Fertilizing Company, vs Hyde Park, 97 U. S. 659–666.

"The contract must be shown to exist. There is no presumption in its favor."

Tucker vs Ferguson, 22 Wal, 527—575.
Christ Church, vs Philadelphia, 24 How. 300—302.
Newton vs Commissioners, 100 U. S. 548—561.

When subjected to the rules laid down by this Court, does the 4th section of the act of Dec. 14th 1855, by declaring that the line of road therein indicated,

"shall be considered as proper improvements to be aided from the Internal Improvement Fund"

satisfactorily establish that it was the intention of the General Assembly to grant to the Alabama and Florida Railroad Co., an entirely different kind of aid, from that expressed—an aid as distinct in its kind and character as in the source from whence it must come ?

By the original contract there was imposed upon the Alabama & Florida Railroad Co., the duty to build and operate its road.

If one of two contracting parties, after the contract is fully consumated, promises more than he contracted to do, it is a gratuitous promise, a *nudum pactum*. Such was the position of the parties and if the General Assembly had constitutional power to make the promise, there was a lack of sufficient consideration to bind the people and the State and the promise was a mere gratuity, as in .

Tucker vs. Furgeson, 22 Wal. 527.
West Wisconsin Railway Company vs. Board of Supervisors, 93 U. S. 595.
Salt Company vs. East Saginaw. 13 Wal. 373.

———0———

[III.] If the General Assembly in 1855 had the power to grant special and local exemptions from taxation; and if by the legislation of 1855 the General Assembly did exercise that power in a mode authorized by the Constitution then in force, and did for a sufficient

consideration irrevocably divest the people and State of the power to tax the capital stock and property of the Alabama & Florida Railroad Company :

This plaintiff is not entitled to the exemption claimed.

The assumption that the right to exemption, the immunity from taxation attached to and followed the property, is directly opposed to the authority of this Court in Morgan vs Louisiana, 93 U. S. 217.

The facts of the case at bar might well have been used for this Court's *reductio ad absurdum* in that case. (Record 13.)

Inasmuch as the property of the Alabama & Florida Railroad Company was sold under a foreclosure proceeding in the Court and not by the trustees of the internal improvement fund, (Exhibit A, Record 4.) it is evident the mortgage under which the Pensacola & Louisville Railroad Company bought, was executed under the power granted to the Corporation in its original charter; which grant of power was contained in the last clause of section 7 of the charter, and was in these words:

"And said President and Directors or a majority of them are empowered to borrow money to carry into effect the objects of this act, to issue certificates or other evidences of such loan, and to pledge the property of said company for payment of the same with interest."

Act of January 8, 1853, Chapter 483,
Laws of Florida—acts 1852—3 p. 40.

In Morgan vs. Louisiana, the grant of power was to issue bonds or obligations secured by mortgage on the "property and franchises," and this Court held that immunity from taxation was not embraced in "property and franchises ;" much less then is it embraced in the grant of power "to pledge the property" of the Alabama & Florida Railroad Company.

Exhibit A (Record 4) does not purport to convey any *immunity* which the original corporation possessed or which was attached to its property. The same may be said of the deed from Trustee Maxwell to Pensacola & Louisville R. R. Co. (Record 5.)

Thus upon the face of the chain of title exhibited, it appears that any immunity from taxation of the original company has never passed out of that company, whatever may have been the nature and character of the immunity.

A striking likeness between the two cases, is the legislative language used in the grants of immunity. In both cases it was provided that the capital stock of the companies should be exempt forever, the property of the companies in one case for ten and in the other for thirty-five years after completion ; in both cases the officers and servants of the companies were to be exempt from jury and militia duty.

If possible, still more striking is the likeness of the case at bar to a case more recently before this Court—Wilson vs. Gaines reported in 103 U. S. 417—a writ of error to the Supreme Court of Tennessee. In

Tennessee as in Florida, there was a constitutional injunction to encourage a system of internal improvement. Compare the constitutional injunctions and the legislative language of the two States:

THE TENNESSEE CASE.

Section 9 of Article XI Constitution of Tennessee,

"A well regulated system of internal improvement is calculated to develop the resources of the State and promote the happiness and prosperity of her citizens; therefore it ought to be encouraged by the General Assembly."

The language of the General Assembly of Tennessee.

"The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including work shops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road and no longer."

THE FLORIDA CASE.

Section 2 of Article XI Constitution of Florida.

"A liberal system of internal improvements being essential to the developement of the resourses of the country, shall be encouraged by the governmen- of this State."

The language of the General Assembly of Florida.

"The capital stock of any railroad company accepting the provisions of this act shall be forever exempt from taxation, and the roads, their fixtures and appurtenances, including workshops, warehouses, vehicles, and property of every discription needed for the purpose of transportation of freight and passengers, or for the repair and maintenance of the roads, shall be exempt from taxation while the roads are under construction, and for the period of thirty-five years from their completion—and that all the officers of the companies, the servants and persons in the actual employment of the companies, be and are hereby exempt from performing ordinary patrol or militia duty, working on public roads and serving as jurors.

In the Tennessee case also, the original company availed itself of the privileges of the internal improvement act of Tennessee—(which act differed from the Florida act inasmuch as the former provided for aid from the State instead of from a trust fund originating from appropriations by congress), and subjected its property to the statutory lien therein provided for.

A holder of the property under a foreclosure sale and sundry mesne conveyances, as in this case, claimed the benefit of the exemption. The Supreme Court of Tennessee denied the claim, holding that the privilege of exemption or immunity from taxation was not one that passed from the original company to the then holder; and this Court held as in Morgan vs Louisiana cited *supra*, that the

"immunity from taxation was a personal privilege and not transferable, except with the consent or under the authority of the legislature which granted the exemption, or some succeeding legislature."

103 U. S. 421.

This Court also held, as under the clause of the charter above quoted must be held, in this case—that the lien was put only on the *property* of the company, and that a sale under the lien did not carry with it any immunity from taxation which the property enjoyed in

the hands of the original company.

Wilson vs Gaines, 103 U. S. 417—421
Railroad Companies vs Gaines, 97 U. S. 697—711
Railroad Company vs County of Hamblen, 102 U. S. 273.

This Court having thus settled the law upon this subject, Mr. Pierce in the edition of 1881 of his work on Railroads, says:

"The exemption from taxation is a personal privilege of the corporation to which it was granted, and does not pass to the purchasers of the railroad or to mortgagees who become the owners by a foreclosure. The legislature may, *unless restricted by the State Constitution*, allow the transfer of the exemption to a new corporation which succeeds to the property of the exempted one," * * "but the new corporation will not succeed to the exemption under a general grant of rights powers, and privileges."

Pierce on Railroads, 486

This legislative allowance of transfer must of course rest upon the same grounds as to authority and consideration as a new grant.

And no argument is necessary to show that under the constitution of 1868 the Legislature of Florida is so *restricted* that it could not *allow* such transfer.

For by allowing such transfer it would as effectually *frustrate and disappoint* the purpose of the Constitution (which purpose is undisputably that all railroad property in the State shall be taxed) as it would by an attempt to create or grant a new exemption.

Hence the plaintiff can derive no aid from any legislation under the present Constitution either as a legislative recognition of an immunity in the original company or as an allowance of a transfer thereof; for the Legislature is inhibited from any action that may tend to create, revive or keep alive an exemption from taxation of any property of a corporation, unless such corporation be for religious, educational or charitable purposes.

Indeed the Pensacola & Louisville Railroad Co., and the Pensacola Railroad Co., by accepting charters under the Constitution of 1868 with knowledge that such Constitution demands that their property shall be subject to taxation, thereby assented to their property being taxed and assumed the obligation to pay the tax.

The new Constitution was the companies' *obligation* under the acts of February 4, 1872 and February 27 1877; as the old Constitution was the State's *obligation* under the act of January 6, 1855.

And if the property had before been impressed with an immunity from taxation under the 18th section of the act of January 6, 1855, the moment it became the property of a corporation created under the Constitution of 1868 it became subject to taxation with the assent of such corporation.

The acceptance of a charter under the constitution of 1868 was a waiver of any pre-existing exemption and of itself would bar the Pensacola & Louisville Railroad Company and the Pensacola Rail-

road Company from claiming any exemption.

Railroad Co. vs. Maine 96 U. S. 499—509.
Trask vs. Maguire 18 Wal. 391.
Railroad Companies vs. Gaines, 97 U. S. 697—709—10.
Railroad Co., vs. Georgia 98 U. S. 359—365.

In the face of such waiver and bar as to the two Florida corporations, which were intermediate holders of the property, whence did the present plaintiff derive its immunity or exemption from a share of the burden, which the people of Florida, in their first Constitution provided should be imposed by a general system, in such a way that it should at least bear equally and uniformily upon all persons, corporations and property of the same character and class, and in their present Constitution have provided, shall rest equally and uniformly upon all the property in the State, except that used exclusively for religious, educational or charitable purposes?

E. A. PERRY, of Counsel
for the State of Florida.

109-244

FILED
NOV 7 1883

Supreme Court of the United States.

October Term, 1883.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFFS IN ERROR,

vs.

MANUEL PALMER, COLLECTOR OF REVENUE FOR THE STATE OF FLORIDA AND ESCAMBIA COUNTY.

Upon examination of the statement of the case and the brief of the learned counsel for the plaintiff in error it is found that the counsel has been led into an error which may or may not be important, but upon which are seemingly based several of the points of his argument.

The statement (page 5 of the plaintiff's brief) represents that the first attempt was made to tax this property in 1877, and that such attempt resulted in what is evidently considered a first and final judgment upon the question of the taxability of this property, that is the judgment in the case of Sullivan *v.* Gonzalez. Such is not the case. Some years prior to that, and not long after the purchase of the road by the Pensacola & Louisville Railroad Co., the road was levied upon as the property of that company by Tax-Collector Wheelock, of Escambia county, for State and county taxes, under statutes passed under the new constitution of 1868. W. H. Richardson, the principal stock and bond holder, filed his bill in the Circuit Court of the United States for the northern district of Florida, alleging the grounds upon which it was then and is now claimed that the property is exempt from taxation.

Upon that bill an interlocutory injunction was granted, which prevented any further efforts to collect the tax. At the instance of the State Executive and Comptroller a motion was made before the judge of that court in 1876, (as appears by the petition of the Attorney-General of the State filed in this cause on the 26th of March, 1883,) and then and by that court was rendered the first and only final judgment ever rendered in the matter of the exemption of this property from taxation, until the rendering of the judgment which is now before this court. That judgment held the property liable to taxation, and the taxes were in fact paid. The case of Sullivan *v.* Gonzalez still stands, as the case of Richardson *v.* Wheelock stood before the dissolution of the interlocutory injunction, upon preliminary injunction, with leave to defendant to answer.

See 16th Fla. at 794.

This probably explains why the "bill in the present case was not filed upon the ground that the question was *res adjudicata*," and why the proceedings in the Sullivan and Gonzalez case were not made of record in this case. Had the bill been so framed, and those proceedings been made of record here, these matters would also have been made of record by the answer, and considered in defendant's brief, and would have shown that if the question is *res adjudicata* it is because it was finally adjudicated by the Circuit Court of the United States in favor of the State.

As the proceedings in neither Sullivan *v.* Gonzalez or Richardson *v.* Wheelock are part of the record, (Spring Co. *v.* Knowlton, 13 Otto, 499,) it would seem that the plaintiff can derive no benefit from the one or the defendant from the other case, other than the persuasive influence of the two decisions, both by courts exercising a jurisdiction subordinate to that of this court in questions of this character, and consequently of equal dignity.

If, then, there has been any rule of property established

by a judgment which became a part of the title to the property acquired by plaintiff, it is the rule deducible from the only final judgment rendered in the matter prior to the plaintiff's acquisition of the property, the judgment of the Circuit Court of the United States dissolving Richardson's injunction, holding the property subject to taxation, and dismissing Richardson's bill.

E. A. PERRY,
Of Counsel.

109-244

OFFICE SUPREME COURT U.S.
FILED
NOV 8 1883
JAMES H. McKENNEY, CLERK

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 765.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

MANUEL PALMES, COLLECTOR, &c., DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF IN REPLY TO BRIEF OF DEFENDANT IN ERROR.

The defendant in error, in his brief, argues three propositions:

I. That the 18th section of the internal improvement act, in granting immunity from taxation, was in violation of the then existing constitution.

II. That this section did not in reality grant any immunity from taxation, as the company was already incorporated.

III. That, if so, the immunity did not pass to the plaintiff in error.

I.

In reply to the first proposition, it will be remembered that section 2, Article XI, of the constitution of 1839, quoted at length in the opinion of the court below, (Record, p. 27,) declared that a liberal system of internal improvements was essential to the State, and made it the duty of the Legistature to ascertain proper objects of improvement, and to provide aid therefor.

In performance of this duty the Legislature enacted the act of 1855, printed at length in Appendix A, by which certain lines of railroad were specified as proper objects, and which roads, whether undertaken in part by then existing corporations, or to be afterwards undertaken, were made a part of the system adopted, were granted certain advantages and benefits, and were subjected permanently to certain restrictions and liabilities.

Section 5 applied the provisions of the act to any existing company, which might come in and subject itself to the provisions of the act.

Following this was the act of January 6, 1855, (Appendix B, p. 30,) adding the line of road here in question to the roads originally named.

To these railroads, whose lines were so made "proper objects," certain lands were appropriated—the proceeds of which lands were to be applied as specified in the act. By section 8 bonds were to be issued for ten thousand dollars a mile, upon which the interest was to be advanced from the improvement fund if not earned, to be repaid by stock from the companies. By section 15 a land grant was given. By section 20 no competing road was to be established within twenty-five miles, &c., &c.

The original company undertaking this line of road was incorporated January 8, 1853, and on the passage of the act of December 14, 1855, immediately came into the system and accepted the act, and since that time has been subject to all the liabilities thereof.

The brief of the defendant in error, (p. 11,) admits that up to the present time the validity of the bonds issued under this act has been undisputed, and assigns as a reason that the State had no interest in disputing them, and the companies were estopped.

But, more than that, the supreme court of Florida, in Gonzales *vs.* Sullivan, discussed the entire question, affirmed the constitutionality of the improvement act, which, up to that time, had never been disputed, and put that question beyond argument.

The same argument employed here would invalidate the entire contract with the roads, affect the bonds, the land grant, the system, in the face of adjudications in the State, supporting all, and in the face of an acquiescence of the State, the companies, and the public in all.

See the language of the court below on this subject, (p. 28 and 29, Record)—

No further argument can be required on this point. The improvement act was declared valid, and the question, and the one question, before this court is, (Record p. 25,) that in the decision of the Supreme Court, "was drawn "in question the validity of a statute of and an authority "exercised under said State of Florida, on the ground of their "being repugnant to the Constitution and laws of the "United States, and the decision was in favor of such "validity." The plaintiff in error raises the only question.

The constitutionality of the improvement act is not "brought under review," except by the brief of the *defendant in error*, and if such were the case, the rule laid down in this Court at all times, and in the cases cited in 8 Wallace, 575, 1 Black., 436, and recently elaborated in Burgess *vs.* Seligman, would compel this Court to follow the State construction.

Elmendorf *vs.* Taylor, 10 Wheat., 159.
Groves *vs.* Slaughter, 15 Pet., 497.
Smith *vs.* Kernochan, 7 How., 219.
Nesmith *vs.* Sheldon, 7 How., 812.
Town of Ottawa *vs.* Perkins, 94 U. S. R., 267.

II.

It is argued that the improvement act gave no exemption from taxation, because the original company was incorporated prior to the passage of the improvement act, and there was no exemption from taxation *in its charter*.

The improvement act was made applicable alike to existing corporations and to future incorporations. The contract was the same—precisely the same—if the privileges were granted to an existing company, as if granted to a company to be formed, or if to a natural person as owner, the date of the corporation was immaterial. The material point was, that the company or the person should accept the act and assume its burdens. We did accept, and are still carrying them.

The argument goes to the extent that in this case the immunity granted to the original company was a gift, not a contract. The bill alleges distinctly that the original com-

pany " by doing all things necessary to entitle it to all the " benefit of the 18th section * * was recognized and adopted " as one of the roads entitled to *all* the benefits of the act," and to this allegation a demurrer is interposed admitting the facts. (Hart *vs.* Sanderson, 18 Fla., 110.)

Apart from the answer furnished by the act itself, the answer is, that the supreme court of Florida construed once for all the effect and meaning of the act of December, 1855, which added the road in question to the roads specifically named in the 4th section of the act of January, 1855.

The same argument used now was attempted then. The effort was made to distinguish between the roads first named and the road now under consideration, and the supreme court of Florida, in Gonzales *vs.* Sullivan, Appendix H, pp. 47, 48, held that the act of December, 1855, made it, *in all respects*, a part of the system, and entitled to all the benefits.

" The whole question is, did this road become a part of " the system? If it did, then antecedent legislation as to " roads embraced in the system * * * became as " much applicable to the road last made a part of the sys- " tem as to the one first made so." See Opinion on Motion for Rehearing, p. 54.

This construction stands, and is binding.

The same argument would make the obligation of the State of Florida, in reference to the improvement bonds and the lands granted, a matter of gift, and permit the obligations to be repudiated whenever it became of interest to the State so to do.

III.

If the plaintiff in error shall not be sustained in their position that the pleadings and proceedings admit that the immunity from taxation passed to the Louisville and Nashville Railroad Company, and that the State is estopped from alleging the contrary, then the question and the only question which can come before this Court will be presented, viz: whether the decision of the court in Gonzales *vs.* Sullivan was correct in holding that the exemption was attached to the property and passed with it.

The court below (Record, p. 26,) takes care to emphasize its decision and its views on this subject. The same judge, in referring to that case, says:

"After careful investigation we there held that the exemption allowed under the 18th section of the internal improvement act was not a privilege or immunity, granted to the corporation originally owning the road, but a privilege annexed by the terms which created it, and the circumstances under which it was made, to the road and property appurtenant thereto, as distinct from a franchise privilege or right restricted on its beneficial operation to the corporation which claimed to own the road. We held that it was not a privilege or immunity appurtenant only to the then ownership of the road, but that the immunity attached to the road at the time it was made a part of the 'system' of internal improvements of this State, and that in order to complete the system and encourage any corporation owning the road to construct it, an exemption of the property for thirty-five years after completion was intended by the Legislature. We held that the exemption attached to the *rem;* that such exemption vested in contract; followed the property; that a subsequent levy and

"collection of taxes would impair the obligation of the con-
"tract; and that in obedience to the limitations of the Con-
"stitution of the United States upon the power of the State
"in that behalf, the collection of a tax upon the road and
"its appurtenances should be enjoined. As the matter was
"then presented, this was our conclusion; we cannot state
"more clearly the reasons given for that conclusion."

This statement presents the question:

The plaintiff in error has insisted, in the brief submitted, that the decision below affirms the law above quoted, and does not disturb in any respect the construction the State court originally gave to the contract and to the statute, and that it is binding on this Court.

In other words, it was the province of the supreme court of Florida within the cases in this Court, to construe its own constitution, its own statute, and to finally declare whether the immunity was attached to the property, or was a personal privilege.

Elmendorf *vs.* Taylor, 10 Wheat., 159.
Smith *vs.* Kernochan, 7 How., 219.
Nesmith *vs.* Sheldon, 7 How., 812.
Van Rensselaer *vs.* Kearney, 11 How., 318.
Webster *vs.* Cooper, 14 How., 504.
Ohio Life, &c., Co. *vs.* Debolt, 16 How., 432.
Leffingwell *vs.* Warren, 2 Black, 599.
Butz *vs.* Muscatine, 8 Wall., 583.
Douglass *vs.* City of Pike, 101 U. S. R., 686.
Town of Ottawa *vs.* Perkins, 94 U. S., 267.

Having done so, it comes to this Court with that construction affixed to it, and the question is, admitting such to be the case, does this constitute a contract, and, if so, does the

act imposing a tax violate the contract? And to this there can be but one reply.

If it be necessary to this case, the plaintiff in error insists quite as strongly that on an examination of the improvement act this Court must reach the same conclusion, and will not repeat the argument in that behalf. In this case, as in—

Peck *vs.* Railway Co., 94 U. S. R., 177,
Delaware R. R. Tax, 18 Wall., 206,
Central R. R., &c., *vs.* Georgia, 92 U. S. R., 665,
Chesapeake & Ohio R. R. *vs.* Virginia, 94 U. S. R., 718,
Zimmer *vs.* State, 30 Ark., 677,
Tomlinson *vs.* Branch, 16 Wall., 464—

the new companies remained liable to the provision of the improvement act, and the immunity from taxation follows as a privilege in return.

It is evident here that the new corporations remained, as in cases of consolidation, under new names, but with the original rights and immunities, and the original liabilities.

JOHN L. CADWALADER,
Of Counsel for Plaintiff in Error.